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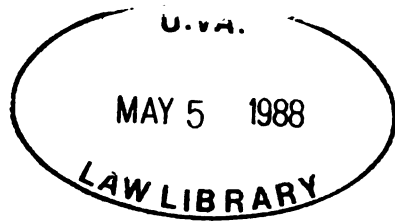




A TREATISE  
ON  
THE LAW OF CIVIL SALVAGE.

BY  
THE RIGHT HON. LORD JUSTICE KENNEDY,  
ONE OF HIS MAJESTY'S LORDS JUSTICES OF APPEAL.

SECOND EDITION,  
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## PREFACE

TO THE SECOND EDITION.



IN this Edition the original plan of the work has been adhered to, and alteration has been made in the text only where it seemed really necessary. One hundred and fifty-six additional cases have been included; the provisions of the Merchant Shipping Act, 1894, relating to salvage have been substituted for the earlier statutory provisions which that Act consolidated; and the Index has been re-written. The usefulness of the book has been, it is hoped, further increased by the addition of the new matter contained in the three Appendices. Appendix A. contains particulars of some recent salvage cases in which the salvage services chiefly consisted of towing disabled vessels—now the most common subject of salvage claims. Appendix B. contains the provisions of the International Convention for the Unification of the Law of Salvage, which was adopted at a Diplomatic Conference held at Brussels in October, 1905, and now only awaits the legislative sanction of the contracting States. It is satisfactory to note that the Convention, except in a few unimportant particulars, is practically identical with the law of salvage as it is administered in the Courts of this country. Appendix C. consists of forms of Lloyd's salvage agreements.

The Editor desires to acknowledge with thanks the courtesy of the authorities of the Admiralty and the Board of Trade respectively for supplying him with copies of the official "Coastguard Instructions" (1904) and the "Instructions to Receivers of Wreck and other Officers" (1895).

A. R. KENNEDY.

25, LORD STREET, LIVERPOOL,  
*March, 1907.*

## PREFACE

TO THE FIRST EDITION.

---

IN the pages of this Treatise will be found an attempt to present concisely and in a connected form an accurate view of the Law of Civil Salvage, as it is administered in the Superior Courts of this country.

Matters which are matters purely of practice or official procedure, or which relate only to the jurisdiction of the Inferior Courts in Salvage, are not within the scope of the work.

The plan which I have followed will appear, I trust, with sufficient clearness from the Table of Contents, which is prefixed to the body of the text, and from the detailed Tables, which are prefixed to the several chapters. It may, however, be shortly stated to be as follows:—The first chapter deals with Salvage generally, its nature and origin, and the treatment of it in the Court of Admiralty and in the Courts of Common Law; the second chapter, with the elements necessary to constitute a Salvage Service; the third, fourth, and fifth chapters, with the subjects to which, the persons by whom, and the ways in which, a Salvage Service may be rendered; the sixth, seventh, and eighth chapters, with the Reward, its amount, its apportionment, and the assessment of the contribution to be made to it by the salvaged interests; and the ninth and last chapter, with Agreements, (a) fixing the amount of the Reward, (b) settling the distribution of it amongst several salvors.

There are only two points in the working out of this plan to which I desire very briefly to refer.

In the first place, so far as this has been compatible with the conciseness at which I have also aimed, I have sought to add to the interest of the book and also to its practical utility by saving the reader from that need of constant reference to Reports (often not immediately accessible) which must exist if a writer confines himself to stating his own conclusions at law



and appending a list of the authorities which he deems to bear in any way upon those conclusions. With this view, I have largely quoted the actual words of those judgments which seem to establish any important point of law or of legal principle; and, in regard to the chief cases which are cited in the text, either as authorities or as examples, I have extracted from the Reports and set out, wherever it was not manifestly needless to do so, so much of the facts of each as is material to the point upon which the reference to the case is made.

In the next place, as I have myself often felt in reading law books the want of the addition of dates to the cases which are cited, I have appended to the Table of Cases a dated Table of all the Reports which are mentioned either in the text and notes, or in the Table of Cases; and wherever the date of a case has appeared to me to be, for any reason, of special value, I have stated it in the text itself.

Although no pains have been spared to ensure the accuracy and completeness of the work, I dare not hope that errors and omissions have been avoided, and I shall be grateful to those who will kindly take the trouble to communicate with me respecting any which they may happen to discover.

I am greatly indebted to my friend Mr. THEOBALD MATHEW, of Lincoln's Inn, for his kindness in undertaking the principal portion of the work of preparing the Index, and to other friends, and especially to Mr. T. G. CARVER, of Lincoln's Inn, for valuable suggestions. I have also to acknowledge with thanks the courtesy of the authorities of the Admiralty and the Board of Trade respectively in permitting me to make use of the official "Instructions for the Coastguard Service" (1887) and the "Instructions to Receivers of Wreck and other Officers," of the same year.

W. R. K.

2, GARDEN COURT, THE TEMPLE,  
*July, 1891.*

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**HIGH COURT OF ADMIRALTY**  
**AND (SINCE 1875) OF THE**  
**PROBATE, DIVORCE AND ADMIRALTY DIVISION OF**  
**THE HIGH COURT OF JUSTICE.**

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1798—1828	Sir William Scott (created Lord Stowell, 1821).
1828—1833	Sir Christopher Robinson.
1833—1838	Sir John Nicholl.
1838—1867	Dr. Lushington.
1867—1883	Sir Robert J. Phillimore.
1875—1891	Sir James Hannen, President of the Probate, Divorce and Admiralty Division, appointed a Lord of Appeal in Ordinary, 1891.
1883—1892	Sir Charles Parker Butt, appointed President of the Probate, Divorce and Admiralty Division, 1891.
1891—1905	Sir Francis Henry Jeune, appointed President of the Probate, Divorce and Admiralty Division, 1892, and created Lord St. Helier, 1905.
1892 ( <i>continuing</i> )	Sir John Gorell Barnes, appointed President of the Probate, Divorce and Admiralty Division, 1905.
1905 ( <i>continuing</i> )	Sir Henry Bargrave Deane.



# THE LAW OF CIVIL SALVAGE.

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## CHAPTER I.

### OF SALVAGE GENERALLY, AND OF THE SALVOR'S REMEDIES.

1. *The Nature of Salvage.*
  2. *Its Origin and governing Principles.*
  3. *Its Treatment in the Court of Admiralty.*
  4. *Its Treatment in the Courts of Common Law.*
- 

IN regard to the preservation of life and property at sea, the word 'salvage' is used indifferently in legal parlance to denote the salvor's service and the salvor's reward (*a*). It was also employed in former times to signify the property saved; but this application of the word now exists only in relation to questions of insurance.

Meaning of  
'salvage.'

The Court of Admiralty, which under the present system of judicature has become merely one part of the Probate, Divorce and Admiralty Division of the High Court of Justice, but which is still most conveniently referred to under its ancient title, recognises two kinds of salvage, viz., military salvage and

Two kinds  
of salvage.

(*a*) "This compensation is known by the name of salvage, and at present is commonly made by payment in money; but in the infancy of commerce was more frequently made by the delivery

of some portion of the specific articles saved or recovered": Abbott, *Law of Merchant Ships and Seamen*, 14th ed. p. 960.

**Chapter I.** civil salvage. Military salvage is such a service as may become the ground of a demand for reward in the Court as a prize court, and consists in the rescue of property from the enemy in time of war. Civil salvage is such a service as may become the ground of a demand for reward in the Court on the civil side of its jurisdiction, and consists in the preservation of life or property from some of the manifold dangers which are at all times incident to the navigation of the sea (*b*). It is with civil salvage only that this treatise is concerned.

**Description of a salvage service.** A salvage service, in the view of the Court of Admiralty, may be described, sufficiently for practical purposes (*c*), as a service (*d*) which saves or helps to save maritime property—a vessel, its apparel, cargo, or wreck—or lives of persons belonging to any vessel, when in danger, either at sea or on the shore of the sea, or in tidal waters, or on the shore of tidal waters, if and so far as the rendering of such service is voluntary, and attributable neither to legal obligation, nor to the interest of self-preservation, nor to the stress of official duty.

**Confined to maritime property.** Only maritime property—that is, a vessel, its apparel, cargo, or wreck (*e*)—can become the subject of salvage. The saving of other kinds of property, such as a floating dry dock (*f*), a raft of timber (*g*), or a buoy (*h*), does not give rise to any right to salvage reward. The law on this point has been clearly laid down by the judgments in the Court of Appeal and the House of Lords in *The Gas-Float Whitton*, No. 2 (*h*). In that

(*b*) Edwards, *Treatise on the Jurisdiction of the High Court of Admiralty* (1847), pp. 184, 185.

(*c*) Salvage is due to those who catch 'royal' fish off the British coast. See *The King v. The Lord Warden of the Cinque Ports*, 2 Hag. 438.

(*d*) As to various kinds of salvage service, see below, Ch. V. p. 123.

(*e*) As to what may be included

within this description, see below, Ch. III. pp. 54—62.

(*f*) *Cope v. Valette Dry Dock Co.*, 119 U. S. Rep. 625.

(*g*) *Nicholson v. Chapman*, 2 H. Bl. 254; *A Raft of Timber*, 2 W. Rob. 251; *Palmer v. Rouse*, 3 H. & N. 505.

(*h*) *The Gas-Float Whitton*, No. 2, (1895) P. 301; (C. A.), (1896) P. 42; (1897) A. C. 337.

case salvage reward was claimed for services rendered in saving a gas-float which was adrift. The Court of Appeal (Lord Esher, M. R., Kay and Lopes, L. JJ.), reversing the decision of the Divisional Court of Admiralty (Sir F. Jeune and Bruce, J.), held that the gas-float, not being a ship or part of a ship or of her apparel or cargo or the wreck of them, was not a subject-matter in respect of which a salvage claim could be maintained in the High Court of Admiralty. Lord Esher, delivering the judgment of the Court of Appeal, after an exhaustive review of the Admiralty common law and statute law and some American decisions (i) bearing upon the subject, came to the conclusion "that by the common or original law of the High Court of Admiralty the only subjects in respect of the saving of which salvage reward could be entertained in the Admiralty Court were ship, her apparel and cargo, including flotsam, jetsam, and lagan, and the wreck of these and freight; and that the only subject added by statute is life salvage" (k). And this view was upheld on appeal in the House of Lords (Lords Herschell, Watson, Macnaghten, and Morris) (l).

In the case of the salvage of property upon the high seas, the right of the salvor to reward has been recognised by the English maritime law—the law, that is, which is administered in the Admiralty Court of England (m)—from ancient times.

Early recognition of rights of salvor of property in the high seas.

(i) There is some conflict of opinion in America as to claims for salvage services in rescuing goods lost at sea and found floating on the surface or cast upon the shore. "When they have belonged to a ship or vessel as part of its furniture or cargo, they clearly come under the head of wreck, flotsam, jetsam, lagan, or derelict, and salvage may be claimed upon them. But when they have no connection with a ship or vessel, some authorities are against the claim, and others are in favour of it." Per Bradley, J., *Cope v. Valette Dry Dock Co.* (1887), 119 U. S. Rep. 625. For instances

of authorities in favour of the claim, see *Muntz v. A Raft of Timber*, 15 Fed. Rep. 555, 557; *A Raft of Spars*, 1 Abbott's Adm. 291; 50,000 Feet of Timber, 2 Lowell's Judgments, 64; *Bywater v. A Raft of Piles*, 42 Fed. Rep. 917 (approved in *Whitmire v. Cobb* (1898), 88 Fed. Rep. 91). For instances *contra*, see *Tome v. Four Cribs of Lumber*, Taney's Judgments, 533; *Cope v. Valette Dry Dock Co.*, *ubi sup.*

(k) (1896) P. 42, at p. 63.

(l) (1897) A. C. 337.

(m) See per Brett, M. R., *The Gaetano and Maria*, 7 P. D. 137, at



Chapter I. "It is what the law calls *jus liquidissimum*, the clearest general right" (n). On the other hand, the jurisdiction of the Court of Admiralty to decree salvage reward for the saving of property within the body of a county, and its jurisdiction to reward a salvor, or set of salvors, whose efforts have saved human life only, and have not also saved property, are alike the creatures of modern statute (o).

Independent  
of contract.

Whilst the Court of Admiralty is not precluded from entertaining a salvage claim because the nature of the service or the amount of its reward has been fixed by agreement, the right of the salvor is, essentially, independent of contract (p). It is enough that the services in respect of which he claims reward have been rendered at a time when the property to which they have been rendered is so circumstanced that a prudent owner would accept them (q). So, in *The Vandyck* (r), where two vessels were in collision in the Mersey, and a tug rendered service to one without a request from or engagement by the other, and the latter was thus rescued from a position of great danger, such service being a direct benefit to both vessels, the tug was held entitled to salvage reward from both. In *The Emilie Galline* (s), where two tugs which were in attendance upon the steamship *Gorjistan* towed her away from a position in which she was endangering the barque *Emilie Galline*, Bucknill, J., said: "The question I have to ask myself here is: would the master of the *Emilie Galline*, as a reasonably prudent man, if he had been asked by the tugs, *Huntsman* and *Stephen Gray*, or

p. 143: "It is not the ordinary municipal law of the country, but it is the law which the English Court of Admiralty, either by Act of Parliament or by reiterated decisions and traditions and principles, has adopted as the English maritime law."

(n) Per Lord Stowell, *The Waterloo*, 2 Dods. 433, at p. 435.

(o) See these matters considered below, Ch. III. pp. 50—54.

(p) See *The Hestia*, (1895) P. 193, at p. 199.

(q) *The Vandyck*, 7 P. D. 42; (C. A.) 5 Asp. M. L. C. 17; *The Liffey*, 6 Asp.

M. L. C. 255, where a person rendered services in the nature of salvage to a vessel which at the time he believed to be his own; *The Augusta Legembre*, (1902) P. 123, where the master of the salvaged vessel declined the salvage services but took no steps to prevent the performance of them; *The Emilie Galline*, (1903) P. 106; *The Port Caledonia* and *The Anna*, (1903) P. 184. In the last two cases the claim was rejected. Cf. also *The H. M. Hayes*, Lush. 355.

(r) *Ubi sup.*

(s) *Ubi sup.*

one of them, whether they should free the steamer from the barque, have said 'yes' or 'no'? . . . In the circumstances, is it more reasonable to come to the conclusion that the master would have said, 'Let them tow her clear, they are in attendance upon her; let them do it; here I am aground'? or is it more reasonable to suppose that, if asked the question, he would have said, 'Yes, tow away, and you shall be entitled to a salvage award hereafter from me'? " (t)

"The jurisdiction which the Court exercises in salvage cases," said Sir James Hannen in *Five Steel Barges* (u), "is of a peculiarly equitable character. The right to salvage may arise out of an actual contract; but it does not necessarily do so. It is a presumption of law arising out of the fact that property has been saved that the owner of the property who has had the benefit of it should make remuneration to those who have conferred the benefit upon him, notwithstanding that he has not entered into any contract on the subject. I think that proposition equally applies to a man who has had a benefit arising out of the saving of the property."

The origin of the salvor's right, according to the judgment of Sir Christopher Robinson, is to be found in the doctrine of the Roman law, which gave to one who preserved or improved the property of another without his request, and even without his knowledge, a title to compensation from the owner of the property which had thus been benefited. Speaking, in the case of *The Calypso* (v), of both military and civil salvage, that learned judge said (x):

Derived from  
Roman law.

"It will be found, I think, that both these forms of salvage resolve themselves into the equity of rewarding spontaneous services, rendered in the protection of the lives and property of others. This is a general principle of equity, and it was considered as giving a cause of action in the Roman law; and from that source it was adopted by jurisdictions of this nature

(t) (1903) P. 106, at p. 112.

(u) 15 P. D. 142, at p. 146. Cf. also per Wightman, J., *Lipson v. Harrison*, 2 W. R. 10, at p. 11; per Bruce, J., *The Hestia*, (1896) P. 193,

at p. 199; and per Sir F. Jeune, *The Cargo ex Port Victor*, (1901) P. 243, at pp. 247, 249.

(v) 2 Hagg. 209.

(x) *Ibid.* at p. 217.

Chapter I. in the different countries of Europe. This is the account which Sir William Wiseman, who was judge of this Court, gives of the origin of salvage. Referring to the title in the Digest (y), he says (z): 'Upon the equity hereof is that proceeding in the Admiralty Court clearly justified, whereby, if a ship, being set upon by pirates or by enemies, shall be rescued by another ship seasonably coming to her rescue, it charges the ship that is thus redeemed with salvage money to the other that did so endanger herself to preserve her; that recompense being but in lieu of all damages thereby sustained, and for future encouragement to others to fight in the defence of those that they see assailed.' Considering all salvage, therefore, to be founded on the equity of remunerating private and individual services, a Court of justice should be cautious not to treat it on any other principle."

Difference  
between  
maritime and  
common law in  
regard to  
salvage.

There can be little question as to the importance which, in the genesis of the law of salvage, attaches to this doctrine of the Roman law, that compensation for services rendered spontaneously and not under any contract may be required from him who has been benefited by them. The adoption of the doctrine in the maritime law marks, indeed, an interesting point of difference between that and the common law, which was noticed by Bowen, L. J., in his judgment in the case of *Falcke v. The Scottish Imperial Insurance Co.* (a): "The general principle is, beyond all question, that work and labour done or expended by one man to preserve or to benefit the property of another do not according to English law create any lien upon the property saved or benefited, nor even, if standing alone, create any obligation to repay the expenditure. Liabilities are not to be forced upon people behind their backs any more than you can confer a benefit upon a man against his will.

"There is an exception to this proposition in the maritime law. . . . With regard to salvage, general average, and contribution, the maritime law differs from the common law. That

(y) Dig. L. iii. tit. 5, *De negotiis gestis*.

(z) Law of Laws, p. 90.

(a) 34 Ch. D. 234, at p. 248. See

also, per Eyre, C. J., *Nicholson v. Chapman*, 2 H. Bl. 253, at p. 257; and per Lord Blackburn, *Aitchison v. Lohre*, 4 App. Cas. 755, at p. 760.

has been so from the time of the Roman law downwards. The maritime law, for the purposes of public policy, and for the advantage of trade, imposes in these cases a liability upon the thing saved—a liability which is a special consequence arising out of the character of mercantile enterprise, the nature of sea perils, and the fact that the thing saved was saved under great stress and exceptional circumstances. No similar doctrine applies to things lost upon land, nor to anything, except ships or goods in peril at sea” (a). The same point is commented on by Marshall, C. J., in the old American case of *Mason v. Ship Blaireau* (b) :

“If the property of an individual on land be exposed to the greatest peril, and be saved by the voluntary exertions of any person whatever; if valuable goods be rescued from a house in flames, at the imminent hazard of life, by the salvor, no remuneration in the shape of salvage is allowed. The act is highly meritorious, and the service is as great as if rendered at sea, yet the claim for salvage could not perhaps be supported. It is certainly not made. Let precisely the same service, at precisely the same hazard, be rendered at sea, and a very ample reward will be bestowed in the Courts of justice.”

But the law of salvage, as it now exists, is not wholly referable to the doctrine of the Roman law. Both Bowen, L. J., in the passage cited above from *Falcke v. The Scottish Imperial Insurance Co.*, and Marshall, C. J., in the portion of his judgment in *Mason v. Ship Blaireau* which follows that which has been quoted, recognise the presence in the law of salvage of an element of influence for which that doctrine by itself would not account. Salvage, in the Court of Admiralty, is more than a question of private right. It stands upon a broader basis than “the equity of remunerating private and individual services.” “It is,” as Mr. Justice Story has observed (c), “a mixed question of private right and public policy.” The reward is assessed by

Other element  
—public  
advantage.

(a) *Falcke v. The Scottish Imperial Insurance Co.*, 34 Ch. D. 234, at p. 248. See also, per Eyre, C. J., *Nicholson v. Chapman*, 2 H. Bl. 253, at p. 257; and per Lord Blackburn, *Aitchison v. Lohre*,

4 App. Cas. 755, at p. 760.

(b) 2 Cranch, 239, at p. 265 (U. S. Supreme Court), 1804.

(c) Cited by Dr. Lushington, *The Albion*, Lush. 284.

**Chapter I.** the Court, neither as a compensation merely '*pro opere et labore*,' nor according to the measure of direct benefit conferred by the particular salvage service upon the shipowner and the cargo-owner, who are chargeable with the payment of the reward. Indeed, in the case of claims for the saving of life—the preservation of passengers or crew—the owners of ship and cargo often pay for that from which they have received no benefit at all. They are made to do so, because public policy and the interests of humanity and commerce require that they should. "Salvage is not governed by the ordinary rules which prevail in mercantile transactions on shore. Salvage is governed by a due regard to benefit received, combined with a just regard for the general interest of ships and marine commerce" (*d*).

The salvor's remedies.

The machinery of the Court of Admiralty secures to the salvor, in a very ample way, the power of enforcing his rights. By the maritime law he has a lien, or privileged claim, upon the salvaged property. The lien extends to ship and cargo, and also to freight, when freight has been saved (*e*). It accrues immediately upon the performance of the salvage services (*f*), and it is not impaired by any change in the property in, or the possession of, the *res*. It takes precedence of all liens previously attaching to the *res*, though it will be postponed in favour of a lien for subsequent damage or for subsequent salvage (*g*). And it can be rendered unavailing only by the laches of the salvor himself (*h*). The Court of Admiralty renders this lien effectual for the salvor's benefit by a procedure *in rem*, whereby the salvaged property is arrested and may be sold,

(*d*) Per Dr. Lushington, *The Fusilier*, Br. & Lush. 341, at p. 347; cf. to the same effect, per Lord Stowell, *The Sarah*, 1 C. Rob. 313; per Sir J. Nicholl, *The Hector*, 3 Hagg. 90, at p. 95.

(*e*) *The Westminster*, 1 W. Rob. 229; *The Charlotte Wylie*, 2 W. Rob. 495.

(*f*) In the case of mere towage there is no maritime lien. *Westrup v. The Great Yarmouth Carrying Co. Limited*, 43 Ch. D. 241.

(*g*) *The Veritas*, (1901) P. 304. Whether it takes priority of wages earned afterwards, *qu.* See *The Sabina*, 7 Jur. 182; *The Edina*, 4 W. R. 91.

(*h*) See, in regard to salvage, *The Royal Arch*, Swab. 269, 285; as to laches generally, *The Bold Buccleugh*, 7 Moore, P. C. 285; *The Europa*, Br. & L. (P. C.) 89; *The Charles Amelia*, L. R. 2 A. & E. 330; *The Fairport*, 8 P. D. 48; *The Kong Magnus*, (1891) P. 223.

should it become necessary, in order to satisfy the salvor's claim (i). Chapter I.

Seeing that the salvor is so fully protected, and that his position does not require to be fortified by the retention of the salvaged property (k), the Court of Admiralty generally views with disfavour any attempt on his part to exclude the owner or the owner's agents and servants from the possession or control of it. In the case of a 'derelict' (l), according to the judgment of the Privy Council in *Cossmann v. West* (m), the salvor who first takes possession has not only a maritime lien for salvage services, but also the entire and absolute possession of the vessel, with which no one can interfere, except in the case of manifest incompetence, and he is not bound to give it up until he has been remunerated for the salvage services. But in all cases other than those of vessels strictly 'derelict,' unless the salvor can prove that a surrender of the salvaged property would mean the loss of the security for his reward (n), or that he was justified by peculiar circumstances (o), any attempt on his part to retain possession or control as against the owner or his representatives, may be treated by the Court as a ground for depriving the salvor of costs (p), or for reducing the reward (q), or, in an aggravated case, for not giving any reward (r). Even in the case of 'derelict,' it is not the duty of the salvor under

Retention of possession by salvor need- less, and therefore generally disapproved by Court of Admiralty.

Exception in case of 'dere- lict' con- sidered.

(i) See per Lord Esher, M. R., *The Cella*, (C. A.) 13 P. D. 82, at p. 86. As to the nature of the proceeding *in rem*, see the judgment of the C. A., *The Parlement Belge*, 6 P. D. 177, at pp. 217, 218. A judgment *in rem* in a salvage action is not conclusive as to the grounds upon which the judgment proceeded. Hence an underwriter is not estopped thereby from proving that there was, in fact, no peril of the sea or other occasion for salvage services. *Ballantyne v. Mackinnon*, (1896) 2 Q. B. 455.

(k) Cf. per Lord Stowell, *The Eleonora Charlotta*, 1 Hagg. 156.

(l) As to the meaning of 'derelict,' see below, Ch. III. p. 61.

(m) 13 App. Cas. 160, at p. 181;

cf. also *The Champion*, Br. & L. 69, at p. 71; *The Gertrude*, 30 L. J. Adm. 130.

(n) This is the foundation upon which salvors are at any time allowed to retain possession. See per Dr. Lushington, *The Glasgow Packet*, 2 W. Rob. 306, at pp. 312, 313.

(o) As in *The Orbona*, 1 Spinks, E. & A. 161, 165; *The Elise*, W. N. (1899) 54. See also per Sir J. Hannen, *The Pinna*, 6 Asp. M. L. C. 313, 314.

(p) *The Pinna*, *ubi sup.*

(q) *The Dantzic Packet*, 3 Hagg. 383; *The Glasgow Packet*, 2 W. Rob. 306.

(r) *The Champion*, Br. & L. 69; *The Barefoot*, 14 Jur. 841; *The Capella*, (1892) P. 70.

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all circumstances to retain exclusive possession. In *The Lady Worsley* (s), which was such a case, Dr. Lushington observed: "Mr. Thompson [the salvor] retained possession of the vessel, and, under the circumstances, I am of opinion that he had no right to do so. It is perfectly true that it is laid down by some authorities that there is a right to possession in salvors; but it is a defence never received by this Court without just consideration. I cannot conceive that there could be any rule more mischievous to commercial contracts at large, and to the property salvaged, than that it should be held that, under whatever circumstances, it was the duty of the salvors to retain the property."

By the Merchant Shipping Act, 1894, provision is made for the delivery to the Receiver of Wreck of all wreck found or taken possession of within the United Kingdom by any one but the owner, and of all cargo or other articles washed ashore, or otherwise lost or taken from any vessel stranded or in distress at any place on or near the coasts of the United Kingdom, or any tidal water within the United Kingdom, and for his custody of all property in respect of which salvage is due under that Act until process of a competent Court has been issued for its detention, or payment of salvage has been made, or has been adequately secured (t). There is also provision in the same Act (s. 554) for the abandonment by the salvor of his lien upon obtaining a written agreement as there prescribed which shall bind the salvaged property and its respective owners for the payment of such salvage as shall be adjudged to be due.

**Maritime lien**  
—its origin.

It is not known when the Court of Admiralty first recognised a maritime lien in favour of the salvor. One can only say that the doctrine of an implied or tacit hypothecation, upon which the maritime lien both for salvage (u) and for seamen's wages (v)

(s) 2 Spinks, E. & A. 253, at p. 255. The salvage claim was in this case dismissed without costs.

(t) 57 & 58 Vict. c. 60, ss. 518, 519, 552. See *The Fulham*, (1898) P. 106; (C. A.), (1899) P. 251. As to the

term 'wreck,' see below, Ch. III. p. 60.

(u) See *Tranter v. Watson*, 6 Mod. 11.

(v) See *Wells v. Osmond*, 6 Mod. 238; 2 Ld. Raym. 1044.

seems to rest, was probably a later outgrowth of the practice of arrest, and originated in the desire to find for the use of that process in those cases an explanation analogous to that which was afforded in bottomry (*x*) by an actual hypothecation (*y*). Chapter I.

The history of the process itself is far from clear. The course of Admiralty procedure, shown by Clerke's "*Praxis Supremæ Curiae Admiralitatis*" (*z*), which, though written much earlier, was first published in London in the year 1667, and is said to have been described by Lord Hardwicke as a work of undoubted credit, is an arrest of the person (*a*) of the defendant under a warrant or mandate of the judge, and his subsequent release upon his finding security sufficient to satisfy the amount of the suitor's claim. A procedure *in rem* is mentioned only in the case of a defendant absconding or being out of the realm. The plaintiff might then proceed by attachment against the defendant's ship or goods within the Admiralty jurisdiction; and if several creditors had sued out warrants of attachment against the property, their claims had priority, not as maritime liens, but according to the dates of the institution of their respective suits, or the dates of the execution of their respective warrants of attachment (*b*). One might be led by this evidence to conjecture that the Court of Admiralty, having drawn from the Roman law the equitable principle, according to which compensation was due to the salvor from the owner of the salvaged property, and having, in the first instance, employed a procedure *in personam*, adopted, at a later time, the procedure *in rem* as a supplement to the earlier procedure which could not afford the salvor any remedy in this country, if the owner of

(*x*) *Bridgeman's Case*, Hob. 11; *Corset v. Husely*, Comb. 135; *Justin v. Bellam*, 1 Salk. 34.

(*y*) On maritime lien, see *The Bold Buccleugh*, 7 Moore, P. C. 285; *The Two Ellens*, L. R. 4 P. C. 161, 169; *The Heinrich Bjorn*, 11 App. Cas. 270; *The Sara*, 14 App. Cas. 209; *The Young Mechanic*, 2 Curtis (Amer.), 404; *The Brig Nestor*, 1 Sumner (Amer.), 73; *The Dictator*, (1892) P. 304; *The Ripon City*, (1897) P. 226; *Currie v. McKnight*, (1897) A. C. 97; *The*

*Veritas*, (1901) P. 304.

(*z*) Ed. 1829, pp. 2—11, tits. 1—5. The first publication appears to have been in Dublin, 1666. And see per Sir F. Jeune, *The Dictator*, (1892) P. 304, at p. 311 *et seq.*, and *The Cargo ex Port Victor*, (1901) P. 243, at pp. 248, 249.

(*a*) "The proceeding by arrest of the person has now for many years been obsolete," per Dr. Lushington, *The Clara*, Swab. 1, at p. 3.

(*b*) *Praxis*, tits. 28—44.



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the salvaged property remained out of the jurisdiction. It was to meet the possibility of a similar injustice, in the case of those who supply necessaries to foreign ships, that the Legislature, by the passing of the 3 & 4 Vict. c. 65, s. 6, provided a procedure *in rem* for the enforcement of their claims in this country (c).

But the true view probably is that the earliest Admiralty procedure in all civil matters within its jurisdiction was an arrest of the property. There is evidence of its use in the first half of the seventeenth century (d). Later, in 1679, Saunders, C. J., observed, that "nothing was now more frequent than for the Admiralty to arrest ships lying in the river; that it was done every day for mariners' wages and other maritime matters" (e). In regard to salvage, the opinions of modern judges as to the antiquity of the procedure *in rem* are clear and emphatic. There is a dictum of Dr. Lushington in *The Zephyrus* (f), which was in substance repeated by him in *The Fusilier*, and was quoted with approval by Brett, L. J., in *The Cargo ex Schiller* (g), that "the jurisdiction of the Court in salvage cases is founded upon a proceeding against property which has been saved." A similar expression is to be found in the judgment of Sir John Nicholl in *The Rapid* (h).

There are, moreover, several considerations of probability which point to the same conclusion. In the first place, when, at a comparatively late date, the growth of commerce called for the action of the Court of Admiralty in salvage, that Court would naturally follow the procedure which had been in use in the kindred case of 'derelict' and other 'droits' of Admiralty (i),

(c) "The Act in question was passed with the express intention of remedying the inconvenience to which persons in the situation of the claimant in this suit (for necessaries supplied to a foreign ship) were subjected before the Act passed, in being compelled to prosecute their claims against the owners in foreign courts." Per Dr. Lushington, *The Alexander Larsen*, 1 W. Rob. 288, at p. 290.

(d) *Greenway and Barker's Case* (1613), Godbolt, 260; *Harbyn v. Berry*, *The Thomas and the John* (1648), Marsden's Admiralty Cases, 1648—1840; Edwards' Treatise on the Jurisdiction of

the High Court of Admiralty, p. 24. The first reported case referring to this procedure in salvage seems to be *Tranter v. Watson*, 6 Mod. 11, in the year 1703.

(e) *Sandys and the East India Co.*, Skinner, 91, at p. 93.

(f) 1 W. Rob. 329, at p. 331. But see per Sir F. Jeune, *The Dictator*, (1892) P. 304, at p. 311 *et seq.*; and *The Cargo ex Port Victor*, (1901) P. 243, at pp. 248, 249.

(g) 2 P. D. 145, at p. 149.

(h) 3 Hagg. 419, at p. 422.

(i) As to droits of Admiralty, see *The King v. Forty-nine Casks of Brandy*,

and which was *in rem*. In the second place, there was in early times a tendency in our law, in all legal matters connected with it, to personify the *res*, and especially if the *res* was a ship — ‘the most living of all inanimate things.’ Even now we see a trace of the tendency in the habitual use in collision cases of the terms ‘the innocent ship,’ the ‘wrong-doing ship’ (*k*). Lastly, the great and obvious advantage to the claimant of salvage in having an immediate recourse to the salvaged property as a security for the satisfaction of his claim wherever, as is frequently the case, its owner is a person resident abroad, must from the first have operated in favour of the choice of a procedure *in rem*.

Whatever may have been the date and circumstances of its origin, the procedure *in rem* unquestionably is now the salvor’s usual and most effective remedy. But it is not his only remedy. The salvor possesses in the Court of Admiralty, concurrently with the right of action *in rem*, at least a qualified and conditional right of action *in personam*. “Although salvage suits in the form of actions *in personam*,” said Sir Francis Jeune in *The Elton*, “are comparatively rare, the Court of Admiralty always had jurisdiction . . . to entertain such suits when at least there existed a *corpus* of property salvaged” (*l*).

The procedure  
in *personam*.

The assertion of such a right was noticed by Lord Stowell in the year 1799. In his judgment in *The Two Friends* (*m*), he says: “I now come to a second position, that every person assisting in a rescue has a lien on the thing saved. He has, as it has been argued, an action *in personam* also; but his first and his proper remedy is *in rem*; and his having the one is no argument against his title to the other.”

3 Hagg. 257; *The King v. Two Casks of Tallow*, *ib.* 294; Williams & Bruce, *Adm. Pr.* 3rd ed. p. 185; and the article “Admiralty Droits and Salvage,” by R. G. Marsden, *Law Quarterly Review*, vol. 15, pp. 353—366.

(*k*) It would be hard to find a stronger illustration of this tendency than the following passage:—“The *Thetis* must have known her own

power, and she adopted her own measures for the performance of the service which she voluntarily undertook; she was perfectly aware of the size, character, and condition of the vessel which she agreed to tow.”—Sir R. Phillimore, *The Thetis*, L. R. 2 A. & E. 365, at p. 369.

(*l*) (1891) P. 265, at p. 269.

(*m*) 1 C. Rob. 271, at p. 277.

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There are before the year 1854 several reported cases (*n*) of the exercise of such a right by salvors of property, proceeding by monition; and, in reference to some of these cases, its existence was noticed by Brett, L. J., in his judgment in *The Cargo ex Schiller* (*o*). In 1854 it was provided by the 17 & 18 Vict. c. 78, s. 13, that "In all cases in which a party has a cause or right of action in the High Court of Admiralty of England against any ship, or freight, or goods or other effects whatever, it shall not be necessary to the institution of the suit for such person to sue out a warrant for the arrest thereof, but it shall be competent for him to proceed by way of monition, citing the owner or owners of such ship, freight, or goods or other effects to appear and defend the suit; and upon satisfactory proof being given that the said monition has been personally served upon such owner or owners, the said Court may proceed to hear and determine the suit, and may make such order in the premises as to it shall seem right." Now, by the Merchant Shipping Act, 1894 (*p*), reward for salvage, whether of life or property, in cases under that Act, is expressly made payable by the owners of the vessel, cargo, apparel or wreck.

Procedure *in personam* was given to the county courts having Admiralty jurisdiction by the 32 & 33 Vict. c. 51, s. 3.

"I think it is perfectly clear on the authorities," said Sir James Hannen in *Five Steel Barges* (*q*), "that an action *in personam* lies against the owners of a vessel which has been saved, even though the property has been transferred to others and the lien lost."

(*n*) *The Hope*, 3 C. Rob. 215; *The Trelawney*, *ib.* p. 216, n.; *The Meg Merrilies*, 3 Hagg. 346; *The Rapid*, 3 Hagg. 419.

(*o*) 2 P. D. 145, at p. 149. See, for recent cases of procedure *in personam* in salvage, *The Medina*, 1 P. D. 272; 2 P. D. 5; *The Prinz Heinrich*, 13 P. D. 31; in each of which cases, however, there was a salvage agreement; *Five Steel Barges*, 15 P. D. 142; *The Elton*, (1891) P. 265; *The Cargo ex Port Victor*, (1901) P. 243. In Scotland, the Court of Session (the

Lord President, the Right Hon. John Inglis, Lords Deas, Muir, and Shand) in 1878 decided that an action *in personam* was maintainable by salvors against the owners of the salvaged ship: *Duncan v. Dundee, Perth, and London Shipping Co.*, Sc. Sess. Cases, 4th Series, vol. 5, p. 742.

(*p*) 57 & 58 Vict. c. 60, ss. 544—546, consolidating the provisions of 17 & 18 Vict. c. 104, ss. 458, 476; 24 Vict. c. 10, s. 9; and 25 & 26 Vict. c. 63, s. 59.

(*q*) 15 P. D. 142, at p. 146.

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If such a procedure did not exist, the salvor would have no available remedy when, as sometimes happens, the salvaged property has never been brought within the jurisdiction of the Court, and the owner has got and kept it out of the reach of arrest.

At the same time, it is clearly settled that the liability of the owner of the *res* to the salvor is, in the absence of some special contract (*r*), only a qualified and limited liability. "There can be no claim for salvage services against a person: something must be saved to which the claim can attach" (*s*). No liability arises at all unless some property (*t*) or, at all events, some interest in property (*u*) has been saved to the person whom it is sought to make responsible for the payment of salvage. The adherence of the Admiralty Court to this principle is well illustrated by the decision in *The Chieftain* (*x*). In that case a monition (by which proceedings *in personam* were then commenced) was moved for against the owners of the salvaged ship calling upon them to show cause why the salvage reward of 400% agreed between the salvors and the master of the salvaged ship should not be paid; and the facts were that, at some time after the salvage services had been rendered, the ship had been lost. Dr. Lushington refused the application. "There seems to me," he said, "the greatest

Right to sue  
*in personam*  
only a qualified  
and  
limited right.

(*r*) See per Sir R. Phillimore, *The Cargo ex Sarpedon*, 3 P. D. 28, at p. 34; per Butt, J., *The Prinz Heinrich*, 13 P. D. 31, at p. 34.

(*s*) Per Sir J. Hannen, *The Annie*, 12 P. D. 50, at p. 51.

(*t*) See per Sir R. Phillimore, *The Cargo ex Sarpedon*, 3 P. D. 28, at p. 34. In that case, the owners of the cargo which was saved, having paid life salvage, sought to recover contribution from the owners of the ship, which was not saved. The claim was rejected on the ground that, as there was no *res* saved to the owners of ship, there was no ground of liability. And see per Lord Esher, M. R., *The Renpor*, 8 P. D. 115, at p. 117; per Sir F. Jeune, *The Elton*, (1891) P. 265, at

p. 269; per Lord Alverstone, L. C. J., *The Cargo ex Port Victor*, (1901) P. 243, at pp. 255, 256. Cf. also *The Raisby*, 10 P. D. 114.

(*u*) "I am of opinion that the right to sue *in personam* is not confined to the case of the defendant being the actual legal owner of the property saved. I think it exists in cases where the defendant has an interest in the property saved, which interest has been saved by the fact that the property is brought into a position of security." Per Sir J. Hannen, *Five Steel Barges*, 15 P. D. 142, at p. 146. And see *The Cargo ex Port Victor*, (1901) P. 243, at pp. 249, 255.

(*x*) 4 Notes of Cases, 460.

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possible difficulty in acceding to this motion, as the property is actually lost and gone, and a monition to show cause is decreed only in cases where the property has been allowed to go into the hands of the owners instead of the parties attaching the property itself. . . . It would be to convert the jurisdiction of the Court from a proceeding *in rem* to a proceeding *in personam*, which can only be where the property is in possession of the proprietors themselves."

If property, or an interest in property, has been saved to the party who is sued for salvage, his liability is limited to the value of that property or interest (*y*). And, further, if in any case of an action *in personam* for salvage it could be shown that, as is conceivable (*z*), an injustice was being inflicted by this method of procedure upon the defendant, which would have been avoided if the plaintiff had chosen to proceed *in rem*, it cannot be doubted that the Court, which is bound by its commission and constitution to determine the cases submitted to its cognizance upon equitable principles, and according to the rules of natural justice (*a*), would find a way to prevent the misuse of its procedure.

Treatment of  
salvage at  
common law.

The common law Courts have been little concerned with salvage questions.

They have never possessed any procedure *in rem*; and, as salvage does not, in itself, constitute a debt (*b*), an action *in personam* for the recovery of salvage could be maintained in them only where the salvor could prove a contract of employment for reward, either express, or, as in *Newman v. Walters* (*c*), to be implied from the circumstances of the case. Expressions are to be found in some reported judgments (*d*), and in Lord Ten-

(*y*) See per Baggallay, L. J., *The Cargo ex Schiller*, 2 P. D. 145, at p. 157.

(*z*) See per Sir J. Nicholl, *The Rapid*, 3 Hagg. 419, at p. 422.

(*a*) Per Lord Stowell, *The Juliana*, 2 Dods. 504, at p. 521.

(*b*) "No man can be compelled to pay salvage unless he chooses to have the property back": per Lord Mansfield, *Cornus v. Blackburne*, 2 Dougl. 640, at p. 648. "If salvage service is rendered to a vessel, the Admiralty

Court will hold the vessel, although it has been doubted whether an action of contract would lie if the owners were sued at law." Holmes on the Common Law, p. 30.

(*c*) 3 Bos. & P. 612. Cf. per Wightman, J., *Lipson v. Harrison*, 2 W. R. 10, at p. 11.

(*d*) See per Eyre, C. J., *Nicholson v. Chapman*, 2 H. Bl. 254, at pp. 258, 259; per Dr. Lushington, *A Raft of Timber*, 2 W. Rob. 251, at p. 255.

terden's great work on Merchant Shipping (*e*), which seem to countenance the view that possibly even without this a salvor might obtain salvage reward in a Court of common law; but it is submitted that, if these expressions were intended to convey such a meaning, they are scarcely in accord either with the principles of the common law or with the weight of judicial authority (*f*). Moreover, a salvor suing in a Court of common law, even if he proved a contract of employment such as would entitle him to recover some amount upon a *quantum meruit*, would lie under the disadvantage of having his remuneration meted out to him upon the basis merely of fair compensation for the work and labour done; whereas, in the Court of Admiralty, as Sir John Nicholl observed in *The Clifton* (*g*), "Various circumstances, upon public considerations, the interests of commerce, the benefit and security of navigation, the lives of the seamen, render it proper to estimate a salvage reward upon a more enlarged and liberal scale." Modern statutes dealing with salvage matters have recognised the Court of Admiralty as the proper forum; and the judges of the Courts of common law, in modern times, have never shown any desire to interfere with that jurisdiction (*h*). In *Atkinson v. Woodall* (*i*), a seaman of the salving vessel brought an action at law to recover his share of salvage money which had been paid over to the owner of the vessel. The Court of Exchequer (Pollock, C. B., and Wilde, B.) held that such an action was not maintainable, and, in giving judgment, Wilde, B., observed (*k*): "The division of salvage is essentially a

(*e*) Abbott, Merc. Shipping, 14th ed. p. 961: "This (*i.e.* the salvor's) compensation, if the parties cannot agree upon it, may by the same law (*i.e.* the common law) be ascertained by a jury in an action brought by the salvor against the proprietor of the goods."

(*f*) See *Lipson v. Harrison*, 2 W. R. 10; *Castellain v. Thompson*, 13 C. B. N. S. 105; *Cornus v. Blackburne*, 2 Dougl. 640; per Bowen, L. J., *Falcke v. The Scottish Imperial Ins. Co.*, 34 Ch. D. 234, 249.

(*g*) 3 Hagg. 117, at pp. 120, 121 (cited by the Privy Council in *The Glenduror*, L. R. 3 P. C. 589). Cf. to

the like effect, *The Industry*, 3 Hagg. 203, at p. 204; per Lord Stowell, *The Sarah*, 1 C. Rob. 313, n.; and *The William Beckford*, 3 C. Rob. p. 355 (cited by the Court of Appeal in *The Glengyle*, (1898) P. 97, at p. 102).

(*h*) In *The Elton*, (1891) P. 265, at p. 270, Sir F. Jeune says: "It is indeed possible that the reason why . . . actions for salvage at common law are so rare, is that the facility of bringing all parties before the Court gave advantages which the common law jurisdiction could not afford."

(*i*) 31 L. J. M. C. 174.

(*k*) *Ib.* at p. 176.

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36 & 37 Vict.  
c. 66, s. 36.  
38 & 39 Vict.  
c. 77, s. 11.

matter of Admiralty jurisdiction, and Mr. Joyce has not been able to cite any case in which an action at law has been held sustainable by a seaman to enforce a claim as a salvor. I think a decision of this Court which would have the effect of withdrawing these questions from the rules of the Admiralty jurisdiction and substituting a jury, would be a most mischievous decision." Provisions are contained in the Judicature Act, 1873, s. 36, and the Judicature Act, 1875, s. 11, and Order XLIX., under which any action which has been commenced in one of the Divisions of the High Court of Justice, but which properly belongs to the Admiralty Division, may be transferred to that Division.

Protection of  
unpaid salvor.

Whilst, however, the salvor as a plaintiff can only in certain cases obtain any relief in a Court of common law, his possessory lien (*l*), as a security for compensation, is recognised in that forum, if he is sued in trover or in detinue by the owner of the salvaged property and he has neither received nor had tendered to him an adequate recompense for his services. Such a case was *Hartfort v. Jones* (*m*). "Trover for goods. The defendants plead that they were in a ship, and that the ship took fire, and that they hazarded their lives to save them; and therefore they were ready to deliver the goods if the plaintiff will pay them 4*l*. for salvage, &c. The plaintiff demurred generally. And Holt, C. J., held that they might well retain the goods until payment, as well as a taylor, or an hostler, or a common carrier. And salvage is allowed by all nations, it being reasonable that a man shall be rewarded who hazards his life in the service of another" (*n*).

(*l*) For a discussion of the difference between the common law and the maritime lien, see per Story, J., *The Brig Nestor*, 1 Sumner (Amer.), 73, at pp. 80—85.

(*m*) 1 Ld. Raymond, 393; *S. C.*, 2 Salk. 654.

(*n*) "The case is very analogous to general average and to salvage, in both of which there is a lien." Per Blackburn, J., *Hingston v. Wendt*, 1 Q. B. D. 367, at p. 373. Statutory recognition of the salvor's possessory lien occurs as early as the year 1353.

"And in case that any ships going out of the said realm and lands, or coming to the same by tempest or other misfortune break upon the sea banks, and the goods come to the land which may not be said wreck, they shall be presently without fraud or evil device delivered to the merchants to whom the goods be or to their servants, by such proof as before is said, paying to them that have saved and kept them the sum convenient for their travel." 27 Edw. 3, c. 13.

Lastly, although, for the reasons which have been stated, it is in the Courts of Admiralty that the rights of the maritime salvor practically have effect, and the rules which govern and define them are to be found, for the most part, in the decisions of the Admiralty Court, and are based upon the principles of maritime law as there understood and adopted (o), still, incidentally, points of the first importance in salvage law come from time to time to be decided in the Courts of common law; as, for example, where payments for alleged salvage services form part of a disputed claim for general average contribution (p).

- (o) Carver, *Carriage by Sea*, 4th ed. *Prios* (C. A.), 7 Q. B. D. 129; *Anderson v. The Ocean SS. Co.*, 10 App. Cas. (H. L.) 107.
- § 322.
- (p) For example, see *Akerblom v.*



## CHAPTER II.

OF THE TWO ESSENTIAL INGREDIENTS OF SALVAGE—DANGER  
OF THING SALVED, AND VOLUNTARINESS OF THE  
SALVOR: ALSO OF SUCCESS, HOW FAR ESSENTIAL.

Two essential  
elements.

Two things at least are essential to the constitution of a salvage service. There must, in the first place, be danger to the subject of the service. In the second place, the undertaking of the service must be a voluntary act on the part of the salvor.

Success is also generally necessary for a valid claim to salvage reward. But this cannot be affirmed so unreservedly, or without important qualifications which are particularly considered in the latter portion of this chapter.

**I. Of the  
DANGER.**

Danger to the life or the property which is the subject of the salvage service is the very foundation of the claim for salvage, and the onus of proving it lies strongly and justly on those who claim as salvors (*a*). Its termination marks the termination of the salvage. So, in the case of *The Endeavour* (*b*), where, in order to get into safety off the Newcombe Sand, it had been necessary for the ship in danger to slip both her bower anchors and chains, and, after she had been brought into a position of safety by the salvors, certain other volunteers recovered these anchors and chains; it was held by Dr. Lushington and, on appeal, by the Privy Council, that such recovery constituted no ground for an action of salvage against the ship or cargo, because the general salvage of the ship and cargo was completed when the ship was got off the sand, and the getting up of the anchors ought not to be considered as part of the salvage service.

(*a*) See per Dr. Lushington, *The Wilhelmine*, 1 Notes of Cases, 376, at p. 378. The danger was, in this case, held not to have been proved. For a case of danger held not sufficient to

found a claim for salvage of life, see *The Cargo ex Woosung*, 3 Asp. M. L. C. 60; and Ch. V. p. 126, below.

(*b*) 6 Moore, P. C. 334.

Upon the important question of the nature of the circumstances that will constitute that condition of danger which is essential in salvage (c), the judicial statement which is most often quoted, and which, in *The Strathnaver* (d), received the approval of the Privy Council, is that of Dr. Lushington in *The Charlotte* (e):

"All services rendered at sea to a vessel in distress are salvage services. It is not necessary, I conceive, that the distress should be immediate and absolute; it will be sufficient if, at the time the assistance is rendered, the vessel has encountered any damage or misfortune which might possibly expose her to destruction if the services were not rendered."

Dr. Lushington expressed himself to a similar effect in *The Phantom* (f), the facts of which will be found below:

"I am of opinion that it is not necessary that there should be absolute danger in order to constitute a salvage service; it is sufficient if there is a state of difficulty and reasonable apprehension. . . . I think that the removing a vessel from apprehended danger and real danger does partake of the character of a salvage service" (g).

The following examples will serve to illustrate the views which have been stated in a general form in these judgments. Examples of necessary danger.

In the case of the sailing ship *Albion*, which, being on a "most perilous" coast in unsettled weather, with insufficient ground tackle (one anchor and chain only), and the windlass and hawsepipe disabled, was towed into port by two steam-tugs, it was held that there was sufficient danger to render the service of the tugs a salvage service (h).

In the case (i) of the ss. *Ellora*, carrying mails and pas-

(c) Cf. also Ch. V., below.

(d) 1 App. Cas. 58, at p. 65.

(e) 3 W. Rob. 68, at p. 71. "I should be sorry to say that the salvaged vessel must be in imminent danger of being lost, or anything of that kind. Something very much less than that would be sufficient. But there must clearly be some danger, either in the position in which she lies or in her condition." Per Sir F. Jeune in *The Golden Gate*, Shipp. Gaz. Weekly Summary, Nov. 1st, 1901.

(f) L. R. 1 A. & E. 58, at p. 60.

(g) Cf. also Sir R. Phillimore, *The Aztecs*, 3 M. L. Cas. 326.

(h) *The Albion*, Lush. 282.

(i) *The Ellora*, Lush. 550. See also *The Thomas Allen*, 6 Asp. M. L. C. 99; *The Werra*, *ib.* 115. In the latter case Sir J. Hannen said (p. 116): "It appears to me and my assessors that she (the *Werra*) was not saved from actual imminent risk. She had lost her propelling power, which, I have often had occasion to say, reduces a

Chapter II.

sengers, which had lost her screw during the voyage from Alexandria to Malta, but, being fully equipped as a sailing ship, made sail, the weather being fine, but the wind light and adverse, and three days afterwards, while still beating to windward, fell in with another steamer and was towed by her into Malta without difficulty and in moderate weather, it was held that the towing, although clearly there was not any immediate or imminent danger, deserved substantial salvage remuneration.

In *The Ella Constance* (k), where Dr. Lushington awarded salvage to the ss. *Isis* for towing a vessel which was in distress for want of fuel, and had burnt her maintopmast and one of her boats, the degree of danger is thus described:—

“It is a case in which there was no immediate risk, no immediate danger, but there was a possible contingency that serious consequences might have ensued.”

In the case of *The White Star* (l), where a sailing ship, otherwise uninjured, had been obliged to slip both her anchors off Folkestone, but still had on board and had got ready a powerful Trotman anchor and chain, and after beating up the Channel for some time in a gale of wind, was taken in tow and brought into port by two steam-tugs in more moderate weather, the question as to the existence of the essential danger was put to the Trinity Brethren in these terms: “Whatever may have been the size and power of the Trotman anchor, would you think, having that anchor alone, it could be properly said the *White Star* was in a safe condition? I do not mean that she was exposed to immediate peril, but whether contingencies might not arise, in which, having a single anchor only, whatever might be its size and strength, she would be exposed to risk and peril which she could not encounter.”

The smack *Phantom* was one of a number of vessels which had entered the harbour of Lowestoft about the same time to take refuge from a N.N.E. gale. Seven beachmen of Lowestoft were engaged by the master of the *Phantom* to haul her from the S. to the N. side of the harbour, in order to avoid

steamship to such a condition of impotence that to rescue her from that situation is in itself a service that is the subject of salvage award.”

(k) 33 L. J. Adm. 191, at p. 193.

(l) L. R. 1 A. & E. 68, at p. 71. See also, as to the absence of ground-tackle causing a situation of danger, *The Prince of Wales*, 6 Notes of Cases, 39.

coming into contact with other vessels making in. Whilst this service was being rendered, a brig entering the harbour came into collision with the *Phantom*, and the beachmen incurred great risk from the falling masts and spars. After about two hours' labour the *Phantom* was hauled over to the north pier. Held, a salvage service, an alleged agreement for 8s. 6d. over-ruled, and 10% awarded (*m*).

The barque *O.*, off Madagascar, with her master ill and her mate disrated for incompetence, was navigated to Table Bay, and thence to England, by the mate of the barque *M. C.* 100% was awarded for salvage (*n*).

A fishing smack fell in with the *Anders Knape*, a foreign steamship, near the Long Sand buoy. The steamship had been on the sands near the Kentish Knock Lightship, but had got off with some damage to her rudder, and had a signal for a pilot hoisted. The master of the smack boarded the steamship and piloted her to the entrance of Harwich harbour. Held, that the owners, master and crew of the smack were entitled to salvage remuneration (*o*).

In the month of March, 1888, the sailing ship *Aglaia* was spoken by the trawler *Maypole* in the North Sea, forty miles from Lowestoft. The attention of the trawler's crew had been drawn to the *Aglaia* by seeing in her rigging an English Jack flag, which the Court held to have been a signal of distress. Many of the crew of the *Aglaia* were suffering from frost-bite, and the helmsman was in consequence steering with one hand. She was also short of provisions. It was held by Sir James Hannen and Butt, J., sitting as a Divisional Court, that these circumstances laid a foundation for a valid salvage claim, and that the trawler, having piloted the *Aglaia* to Yarmouth at the request of her master, was entitled to salvage reward (*p*).

In *The Ormuz* (*q*), where Sir Francis Jeune awarded salvage

(*m*) L. R. 1 A. & E. 58.

(*n*) *The Ottercapse*, Pritch. Adm. Dig. 3rd ed. vol. 2, p. 2094. See, for cases of similar salvage service, below, p. 124, n. (*u*), and *The Charlotte Wylie*, 2 W. Rob. 495; and for a case in which the illness of some of the seamen was held not to constitute such a danger as to give a salvage character to a towage

service, *The Canova*, L. R. 1 A. & E. 54.

(*o*) *The Anders Knape*, 4 P. D. 213. For a case of salvage awarded for a like service to a vessel which (so far as the report shows) was undamaged, see *The Rosclough*, 1 Spinks, E. & A. 267.

(*p*) *The Aglaia*, 13 P. D. 160.

(*q*) Shipp. Gaz. May 5th, 1902.

Chapter II. for standing by at request, and accompanying into port, a vessel which was short of coal, he is reported to have said: "The vessel which was salvaged was [not] in any real danger, and the vessel which effected the salvage was not, herself, in any peril whatever, nor beyond the delay and extra coal expended, was she put to any substantial loss. At the same time there is really an element of salvage about it."

Result of the cases as to necessary degree of danger.

The fair result of the cases appears to be that the danger necessary to found a salvage service, whether it arises from the condition of the vessel or of her crew or from her situation, is a real and sensible danger. On the one hand, it must not be one either existing only in fancy or vaguely possible, and, on the other hand, it need not be absolute or immediate. It must however, it is submitted, be at least so near, so much a just cause of present apprehension, that, in order to escape out of it or to avoid it (as the case may be), no reasonably prudent and skilful seaman in charge of the venture would refuse the salvor's help if it were offered to him upon the condition of his paying for it the salvor's reward.

Liberal view of danger to constitute salvage where the service consists in towing damaged vessels.

There is no doubt that in one class of salvage claim, viz., that which is made for towing a ship which has received damage, the Court of Admiralty has always taken in respect of the possibility of danger a very liberal view in favour of the claim. An illustrative instance of this liberality is afforded by the case of *The Ellora*, the facts of which have been already referred to (r). An extreme case is that of *The Batavier* (s). The main shaft of the engines of the *Batavier*, on a voyage between London and Rotterdam, had broken, but she could sail fairly well, and the weather was favourable. She was towed by a steam-tug to Helvoetsluys, a distance of about ninety miles. Dr. Lushington, in his judgment, which upheld the defendants' tender, said: "I do not hold that the steamer was in danger

(r) See p. 21.

(s) 1 Spinks, E. & A. 169. Cf. also *The Isabella*, 3 Hagg. 427, 428. In *The Iolo Morganwg*, Shipp. Gaz. Weekly Summary, Mar. 29th, 1901, where towage services were rendered

to a barque which had been injured by collision but was in no danger, Sir F. Jeune, in making a salvage award, said: "The essence of the service . . . seems to be expressed in the phrase—'It gave the vessel time to think.'"

## Chapter II.

or disabled ; the service consisted in towing a dull sailing vessel for the distance in question and no more ” ; but he treated this service as a salvage service, and expressly considered the sufficiency of the tender in relation to the value of the property.

The rule in regard to this, which now-a-days is the most common class of salvage claim, is to be gathered from the judgments of Dr. Lushington in *The Reward* and *The Princess Alice*. The rule in such cases.

“ I apprehend that mere towage service is confined to vessels that have received no injury or damage, and that mere towage reward is payable in those cases only where the vessel receiving the service is in the same condition she would ordinarily be in without having encountered any damage or accident ” (t).

“ Without attempting any definitions which may be universally applied, a towage service may be described as the employment of one vessel to expedite the voyage of another when nothing more is required than the accelerating [of] her progress ” (u).

The words “ any damage or accident ” in the earlier of the two judgments must mean, it is submitted, only such a damage or such an accident as affects or at least may affect either the safety of the ship if left without assistance, or the risk or difficulty of towing her. Any other damage or accident would be immaterial in determining the nature of the service (x).

In the case of *Akerblom v. Price* (y), the judgment of the Court of Appeal (Bramwell, Brett and Cotton, L. JJ.), delivered by Brett, L. J., appears at first sight, in one passage (z), to exact, as essential to the foundation of a salvage service, a much *Akerblom v. Price.*

(t) *The Reward*, 1 W. Rob. 174, at p. 177.

(u) *The Princess Alice*, 3 W. Rob. 138, at pp. 139, 140. “ A very clear and precise statement of the law ” : *The Strathnaver*, 1 App. Cas. 58, at p. 63. “ I should be very sorry indeed if anything I was to say in this or in any other judgment were in any way to trench upon that decision ” : per Sir R. Phillimore, *The Jubilee*, 4 Asp. M. L. C. 275, at p. 276. For a case of salvage which was only just

more than mere towage, see *The Medora*, 1 Spinks, E. & A. 17.

(x) See per Dr. Lushington, *The Kingalock*, 2 Spinks, E. & A. 263, at p. 266. Cf. also *The Canova*, L. R. 1. A. & E. 54, and the remarks on Dr. Lushington’s decisions as to pilotage of vessels ‘ in distress,’ in the judgment of the Court of Appeal in *Akerblom v. Price*, 7 Q. B. D. 129, at pp. 132—134.

(y) 7 Q. B. D. 129.

(z) *Ib.* p. 135.

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higher degree of danger than is suggested by any of the authorities to which reference has been made.

"In order to found a claim for salvage reward, it is absolutely essential that ship should be in imminent danger of being lost, and should by the service be saved from such danger."

It is presumed, however, that the Court of Appeal did not purpose by the use of the phrase "imminent danger of being lost" to express any dissent from the views as to the necessary degree of danger which had been so often enunciated and acted upon by the Court of Admiralty during a long period of years and had been approved by the Privy Council. If the words were intended to be taken in their strongest possible sense, the explanation of them may be that, though left general by the immediate context, they were meant to state the law only in regard to the particular claim which was the subject of *Akerblom v. Price*—viz., the claim of a pilot, who is bound by the obligations of his calling to perform for pilotage reward services which in their nature and risk closely border upon salvage, to rank, nevertheless, as a salvor in the particular case, owing to the presence of special dangers. There are other cases which show that salvage claims in the case of a licensed pilot and in the case of a pure volunteer ought to be judged by different standards. "Suppose there was no such danger," said Dr. Lushington in *The Rosehaugh* (a), "as to prevent a pilot going out for the ordinary rate of pilotage, it would not follow that individuals who voluntarily perform that duty would be entitled to no more pay, because the grounds are totally different." "I am clearly of opinion," said Sir James Hannen in *The Aglaia* (b), "that the guidance of a vessel by a person not a pilot under extraordinary circumstances—no matter by what term it is designated, whether by the term 'pilotage' or 'salvage'—rises to the rank of a salvage service."

The reality of the danger.

With regard to the *reality* of danger essential to give rise to a salvage service, it is to be observed that, whilst there can be no salvage service unless a danger exists in fact, yet the

(a) 1 Spinks, E. & A. at p. 268. p. 432.

See also *The Cumberland*, 9 Jur. 191;  
*The Eugenie*, 3 Notes of Cases, 430, at

(b) 13 P. D. 160, at p. 162.

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ignorance of those to whom the service is rendered may well form in itself an element of real danger to them and to the property in their charge, and a ship which might be held to be in safety if handled by a skilful master who knows the locality, may be in peril if her master is not possessed of such skill and knowledge (c). In cases in which the existence of danger to the ship is questioned, the conduct of those on board of her in signalling for assistance or in accepting the services of strange hands is treated by the Court of Admiralty as at least some evidence of it (d). By virtue of the Merchant Shipping Act, 1894 (e), any master who uses or displays, or causes or permits any person under his authority to use or display, any of the signals fixed by rules made by His Majesty in Council to be signals of distress, except in the case of a vessel being in distress, shall be liable to pay compensation for any labour undertaken, risk incurred, or loss sustained in consequence of such signal having been supposed to be a signal of distress, and such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable. It is to be noticed that this provision applies only where the master of a vessel *wrongfully* uses or displays signals of distress. In a case where signals of distress were properly displayed, and a vessel put off in response to them, and on her arrival her services were not required, she was held not to be entitled to compensation under the foregoing provision for the labour undertaken or the loss sustained by her in consequence of answering the signals (f).

Acts of salvaged  
—Admissions  
of danger—  
Signals of  
distress.

The Court of Admiralty has held for a long time past that volunteers induced by an ambiguous signal to go out to assist a vessel, which is in fact damaged or in danger, are entitled to rely upon that signal as a signal of distress and to be treated as salvors (g).

Ambiguous  
signals.

(c) See per Dr. Lushington, *The Eugenie*, 3 Notes of Cases, 430, at p. 431.

(d) *The Bomarsund*, Lush. 77; *The Wilhelmine*, 1 Notes of Cases, 376, at p. 377.

(e) 57 & 58 Vict. c. 60, s. 434, substituted for 36 & 37 Vict. c. 85, s. 18.

(f) *The Elswick Park*, (1904) P. 76.

(g) *The Mary*, 1 W. Rob. 448, at pp. 452, 453; *The Dossitei*, 10 Jur. 865, at p. 866; *The Hedwig*, 1 Spinks, E. & A. 19; *The Felix*, *ib. n.*; *The Little Joe*, Lush. 88; *The Racer*, 2 Asp. M. L. C. 317. Cf. also *The Aglaia*, 13 P. D. 160.



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II.  
Of VOLUN-  
TARINESS.

## Essential.

Services, except in the case of the passenger, are voluntary, unless there is a contractual or official duty to render them.

Services of crew, pilot, tug, ship's agent, and public servants not ordinarily salvage.

Voluntariness on the part of the salvor is, equally with danger to the thing saved, an essential element in the constitution of a salvage service. The salvage of property has been described as the service which volunteer adventurers spontaneously render to the owners in the recovery of property from loss or damage at sea, under the responsibility of making restitution, and with a lien for their reward (*h*). "What is a salvor?" said Lord Stowell in *The Neptune* (*i*). "A person who, without any particular relation to a ship in distress, proffers useful service and gives it as a volunteer adventurer without any pre-existing covenant that connected him with the duty of employing himself in the preservation of that ship." It is to be observed that, except in the peculiar case of the passenger on board a vessel in distress, the requirement of voluntariness in the salvor is satisfied by the absence of any contractual or official obligation. There is a universal moral obligation, where life or property is in peril at sea, to render every possible assistance in its preservation (*h*). "It is the duty of all ships to give succour to others in distress; none but a freebooter would withhold it" (*l*).

In accordance with this just principle of rewarding only volunteers as salvors, neither the crew nor the pilot navigating the ship nor the owner or the crew of the tug towing it under a contract of towage nor the ship's agent are ordinarily held entitled to obtain salvage reward in respect of the services rendered by them in the preservation of the ship herself or of the lives or the cargo which she carries; for all of these persons are under a pre-existing obligation to work in their respective ways for the benefit of the life and property at risk; and the like disability rests upon government officials, however valuable their assistance may be, so long as they are acting only within the lines of their official duty.

(*h*) See per Brett, L. J., *Cargo ex Schiller*, 2 P. D. 145, at p. 149; referring to *The Thetis* (3 Hagg. 14, at p. 48), and *The Neptune* (*ubi infra*).

(*i*) 1 Hagg. 227, at p. 236.

(*l*) It is, however, to be noticed that, while a deviation for the purpose of saving life cannot either vitiate the shipowner's policy of insurance or

constitute a breach of his contract of carriage, the law is different in regard to a deviation for the mere purpose of saving property. *Scaramanga v. Stamp* (C. A.), 5 C. P. D. 295. On this, see Ch. VI. p. 151.

(*l*) Lord Stowell, *The Waterloo*, 2 Dods. 433. Cf. *The Beaver*, 3 C. Rob. at p. 294.

The passenger on board the ship in distress is, ordinarily, Chapter II.  
 unable, for kindred but not identical reasons, to claim as a salvor. Nor are the  
 He is not, it is true, under any legal or official obligation to work services of the  
 for the safety of the ship or her cargo; but in saving them he is passenger.  
 usually both in purpose and fact labouring for his own safety,  
 and he is not permitted by the Court of Admiralty to found a  
 title to salvage reward upon exertions to which he is driven by  
 self-interest, although they may be at the same time incidentally  
 beneficial to other interests. Moreover, the passenger, whilst he  
 is not bound by any legal duty to labour for the ship in peril,  
 may properly be held to have the strongest obligation of moral  
 duty, for it is incumbent upon all on board to assist when there  
 is a common danger (*m*).

The special circumstances in which the above-mentioned persons may earn salvage reward will be considered in detail in a subsequent chapter (*n*). To the same chapter is also reserved the discussion of the cases in which by reason of a particular relation to the ship in distress the owner of the succouring ship, and, sometimes, her crew also, may be debarred from claiming salvage.

In *The Solway Prince* (*o*) the question arose whether persons who did work in raising a ship, under contract with insurers, could claim against the ship as salvors on failing to obtain payment in full from their employers. Sir Francis Jeune decided against the claim. "During the argument," he said, "I doubted whether the plaintiffs should not be considered as having acted in a dual capacity, that is to say both as salvors and as contractors with the insurers. But on reflection, I have come to the conclusion that the latter capacity excludes the Services rendered under contract with third parties.

(*m*) Per Lord Stowell, *The Branston*, 2 Hagg. 3, n. Moral considerations and considerations of policy enter largely into the law of salvage: *The Atlas*, Lush. 518, at p. 529.

(*n*) *Infra*, Ch. IV. p. 110. A reference, however, to the leading cases may be useful. As to crew: *The Neptune*, 1 Hagg. 227; *The Warrior*, Lush. 477; *The Le Jonet*, L. R. 3 A. & E. 556; *Herbert v. Drogan*, 10 Peters (Amer.), 108, 122. As to tug: *The*

*Minnehaha*, Lush. 335; *The I. C. Potter*, L. R. 4 A. & E. 293. As to pilot: *Akerblom v. Price*, 7 Q. B. D. 129; *Herbert v. Drogan*, *ubi sup.* As to agent: *The Purissima Concepcion*, 3 W. Rob. 181. As to passengers: *Newman v. Walters*, 3 Bos. & P. 612; *The Vrede*, Lush. 322. As to officials: *The Aquila*, 1 C. Rob. 37.

(*o*) (1896) P. 120. And see *The Cassia*, Shipp. Gaz. Weekly Summary, Feb. 26th, 1904.

**Chapter II.** former, and that the plaintiffs are not and never were salvors, because they were employed by the insurers under an ordinary and not a salvage contract to do all they did do, on the terms of receiving a specified reward. . . . If the owner made such a contract with such persons himself, provided there be no change in the nature of the service and, it may be necessary to add, provided the transaction is not shown to have been inequitable . . . I think that there can be no doubt that the contracting parties could not claim a remuneration on salvage principles. Nor do I think it makes any difference if the contract is, to the knowledge and with the assent of the owners, made not with themselves but with third parties" (p).

Whether assistance after a collision ranks as salvage.

It was decided by Sir Robert Phillimore (q), in reference to the 25 & 26 Vict. c. 63, s. 33, for which the similar enactment of the 36 & 37 Vict. c. 85, s. 16, was substituted, and which is now reproduced in the Merchant Shipping Act, 1894, s. 422, that the statutory obligation upon every ship after a collision to stand by the other ship and assist, if assistance is required, does not take the assistance given out of the category of voluntary services, so as to prevent the owner and crew of the ship which gives it ranking as salvors, if the services are of the nature of salvage; provided always that those on board the salving ship have not been in fault for the collision or for the damage which has resulted from it. In the later case, however, of *The Beta* (r), under the 36 & 37 Vict. c. 85, s. 16, Butt, J., whilst not directly deciding the point of principle, was apparently inclined to hold generally, as he did in that particular case, that if, after a collision, the innocent ship renders services in the nature of salvage, but not of an extraordinary character, to the wrongdoer, she has thereby simply discharged a statutory duty, and ought not to be rewarded as a salvor. Where a ship is in fault, either wholly or partly, for a collision, neither her owner nor her crew can maintain a claim as salvors for any services rendered by that ship to the other ship or the life or the

(p) (1896) P. 120, at p. 126.

(q) *The Hannibal, The Queen*, L. R. 2 A. & E. 53.

(r) 5 Asp. M. L. C. 276. The service

in this case was of an easy and simple character and the salvage point was not argued. The main issue was that of the responsibility for the collision.

property on board of her in order to avert a danger caused by the collision (s). Chapter II.

Success in the performance of the service for which a salvage reward is claimed, to the extent at least of the service contributing to the ultimate safety of the property in danger, is, as a rule, necessary. The foundation of the authority and jurisdiction of the Court of Admiralty is a service actually rendered (t). "I apprehend," said Dr. Lushington, in *The Zephyrus* (u), "that upon general principles a mere attempt to save the vessel and cargo, however meritorious that attempt may have been, or whatever degree of risk or danger may have been incurred, if unsuccessful, cannot be considered in this court as furnishing any title to salvage reward. The reason is obvious, viz., that salvage reward is for benefits actually conferred, not for a service attempted to be rendered."

III.  
SUCCESS.  
Is generally  
essential.

"The very principle of salvage is to give reward for services which have been successful" (x).

In *The India* (y), a Swedish vessel got upon the Scroby Sand, and upon the morning of the next day a boat's crew from Yarmouth put off to her assistance and their services were accepted. After being actively employed the whole of that day in assisting the vessel they returned to Yarmouth in their boat, taking with them the entire ship's crew and leaving the vessel on the sand without expressing any intention of returning to her. After the vessel had been thus abandoned, she was on the same day boarded by a second set of salvors, who laid out an anchor and adopted the measures necessary for getting her off the sand. In the afternoon, eight of the Yarmouth boatmen returned to the ship and claimed to join in the salvage operations, on the ground of their former services to the vessel. The claim was resisted by the second salvors, who ultimately got the

Examples of  
general prin-  
ciple.

(s) *The Cargo ex Capella*, L. R. 1 A. & E. 356; *The Glengaber*, L. R. 3 A. & E. 534. See below, Ch. IV. p. 82.

(t) See *The Ranger*, 9 Jur. 119.

(u) 1 W. Rob. 329, 330.

(z) *The E. U.*, 1 Spinks, E. & A. 63, at p. 65. See also *The Lockwoods*, 9

Jur. 1017, at p. 1018; *The Chetah*, L. R. 2 P. O. 205, at p. 212; per Sir J. Hannen, *The Camellia*, 9 P. D. 27, at p. 29; per Lindley, L. J., *The City of Chester*, 9 P. D. 182, at p. 202; per Phillimore, J., *The Dart* (1899), 8 Asp. M. L. C. 481, at pp. 482, 483.

(y) 1 W. Rob. 406.

**Chapter II.** vessel off the sand, and with some steam assistance beached her safely at Yarmouth. The claim of the Yarmouth boatmen to salvage was disallowed by the Court, on the ground that they had abandoned the vessel, leaving the salvage service uncompleted.

In *The Edward Hawkins* (z), a steamship was employed to tow to the Mouse another steamship, the *Edward Hawkins*, which was partially disabled, and she towed her in heavy weather for about eleven hours, when, through the force of the gale, the hawser parted, and she was obliged to quit the *Edward Hawkins* in a position of peril. The *Edward Hawkins* was subsequently saved by her own resources, and it was not proved that the towing by the other steamship had contributed to her safety. Held, by Dr. Lushington, and, on appeal, by the Privy Council, that no salvage was earned.

In *The Killeena* (a), the barque N. fell in with the K., a derelict barque, in the Atlantic, and put five hands on board of her. They navigated the K. for three days. The K. then fell in with the barque B., and the five hands on board of the K., having lost heart, were, at their own request, taken on board the B. The B. then sent some of her own crew on board the K., and took her in tow, and towed her until the tow rope broke, when the vessels parted company, and the hands on board the K., with the assistance of the L., a steamship which they afterwards fell in with, brought the K. into Falmouth. In suits instituted on behalf of the owners, masters, and crews of the N., the B., and the L., Sir Robert Phillimore held that the owner, master, and crew of the N. were not entitled to salvage reward, but awarded salvage to the remaining plaintiffs.

Modification  
of general  
rule.

Whilst, however, the general rule which is illustrated by the above examples is clear, and, in the words of Sir James Hannen in *The Camellia* (b), "there can be no doubt that services, however meritorious, which do not in any way contribute to the ultimate safety of the ship, are not entitled to salvage reward," it is equally clear from several decisions, and indeed it has been expressly ruled by the Privy Council (c), that, when a salvage is

Salvage, if the  
claimant's  
act materially

(z) Lush. 515.

(a) 6 P. D. 193.

(b) 9 P. D. 27, at pp. 29, 30.

(c) *The Atlas*, Lush. 518, at p. 527;  
cf. also per Dr. Lushington, *The Samuel*, 15 Jur. 407, at p. 409.

finally effected, those who meritoriously contribute to that result are entitled to a share in the reward, although the part they took, standing by itself, would not have produced it.

**Chapter II.**

contributed  
to the ultimate  
safety of the  
property in  
peril.  
Examples.

In *The Jonge Bastiaan* (d) a ship had struck upon a rock near Harwich, had lost her rudder and beat in her bottom, and, being deserted by her crew, was warped off by the smack *William and Mary*, with great danger and peril. After she had been so brought off, and placed in such a situation that her master was able to bring off some bullion which formed part of the cargo, the vessel sank, but was afterwards weighed up and brought to Harwich by six other smacks. The owner, master, and crew of the *William and Mary*, as well as the owners, masters, and crews of the six other smacks, sued for salvage. In the course of his judgment, Lord Stowell said:—

“It appears that the vessel stuck fast upon a rock, with her bottom beaten in and her rudder lost, when the first salvors went to her assistance in a very heavy sea and succeeded in warping her off. She sunk afterwards, it is true; but it is not on that account to be said that the first salvors had lost her again, or that they had abandoned their interest in her. They did not stay by her; but it cannot be supposed that having risked so much for her recovery they meant to desert her whilst others were employed in their sight in weighing her up and in saving the cargo. If they took no part in those exertions, it would only be because they perceived that the persons employed in that service would perform it as well without them. They had been the original instruments of saving her from her original danger and of bringing her to the place where those other parties were enabled to complete her recovery. I am inclined to throw the salvage of the former as well as the latter services into hotch-pot, and to give all the persons concerned equal shares. The persons employed were many, being the crews of six or seven smacks. I shall direct them all to share alike, giving to owners and masters of the smacks a double share, and one person, whose leg was broken, three shares.”

In *The Aztecs* (e), the smack *Queen Victoria* fell in with

(d) 5 C. Rob. 322. Approved in *The Atlas* (ubi sup.); and contrasted with *The Killeena* by Sir R. Philli-

more, *The Killeena*, 6 P. D. 193, at p. 198.

(e) 3 M. L. Cas. 326.

**Chapter II.** the barque *Aztecs* at anchor in a partially disabled state, near the Gunfleet Sand. An agreement was made between the masters of the two vessels that the master of the smack should "take the *Aztecs* into Harwich Harbour and place her in a proper berth to repair damage, and find steamer to take her in, this 27th October, weather permitting, for the sum of 30*l*." The smacksmen made every effort to carry out the agreement, but failed owing to a change of wind, and were obliged to bring the *Aztecs* to an anchorage not far from the place in which they had originally found her. The smack lay by her all night, during which the weather became very stormy. On the next morning the smack, after her crew had assisted the crew of the *Aztecs* in an unsuccessful effort to heave up the anchor, the chain of which parted, went away, leaving her master on board the barque. The barque proceeded to Gravesend and, the weather moderating, arrived there safely the same evening. It was contended by the defendant's counsel, relying, amongst other cases, upon the case of *The Edward Hawkins*, that the agreement not having been fulfilled, no salvage was due to the smack; but Sir Robert Phillimore, holding, as matters of fact, that the fulfilment of the agreement had become impossible by the 'act of God,' without fault on the part of the salvors, and that they, whilst endeavouring to perform it, had rendered valuable services, and had not left the *Aztecs* without the consent of her master, decided that the owners, master, and crew of the smack were entitled to reasonable remuneration as salvors.

In the case of *The Camellia* (*f*), the ss. *Victoria* fell in with the ss. *Camellia* in the Atlantic, showing signals of distress, and with her propeller shaft broken, about thirty miles out of her usual course from America to England, and, at the request of the master of the *Camellia*, took her in tow. After the *Victoria* had towed the *Camellia* for about eleven hours, the towing hawser broke, and, owing to a reasonable apprehension of danger to the cattle and sheep on board of the *Victoria* if he tried to turn round to connect the ships, her master declined to take the *Camellia* again in tow. By the services of the *Victoria* the *Camellia* had been brought from ten to fourteen miles nearer her proper track and had been towed eighty-five

miles on her course, and thus brought into greater comparative safety. The *Camellia* ultimately reached Queenstown. It was held by Sir James Hannen that the *Victoria* was entitled to 200*l.* as salvage reward. In the course of his judgment the learned judge said, upon the question of principle :—" I am of opinion that the principle laid down by Dr. Lushington and Sir Robert Phillimore in the cases I have referred to, namely, that services which have contributed to the ultimate safety of a vessel, if interrupted before completion, without default of the salvor, are entitled to some remuneration, is applicable not only to the case of a vessel saved from imminent risk of wreck, but also to a case like the present, where the vessel is brought into a position of greater comparative safety than that in which she was when she asked for assistance."

The ss. *Escalona*, in the Gulf of St. Lawrence, fell in with the ss. *Hestia* in a disabled condition and flying signals of distress. The master of the *Escalona* agreed to tow the *Hestia* to a place of safety for 3,000*l.* After towage for some fifty miles in bad weather, the hawser broke. The *Escalona* then stood by while the *Hestia*, in a position of some difficulty and danger, rode out the gale. The *Escalona* afterwards left without performing any further service, except that of sending a message from a lighthouse as to the position of the *Hestia*. Bruce, J., in giving judgment, held that failure to perform the express agreement did not wholly disentitle the *Escalona* to reward, and that, as the *Hestia* was left in a somewhat better position, being about fifty miles nearer her destination and more in the track of vessels than she was before the services began, the *Escalona* was entitled to some remuneration, which he assessed at 300*l.* (g).

The *August Korff* became disabled in bad weather in the Atlantic about 1,000 miles from Falmouth, losing her rudder and part of her stern post. She had been assisted for a few miles and then abandoned by a steamer, when the ss. *Acacia* fell in with her and took her in tow. The *Acacia* after taking her 220 miles on her way lost her at night owing to the hawser parting, and then proceeded on her voyage without rendering any further assistance. Her services had

(g) *The Hestia*, (1895) P. 193.



Chapter II. lasted four and a half days, and in the course of them she had sustained some injury to her engines. Subsequently the *Marquette*, a valuable steamship of 7,000 tons, came up with the *August Korff*, supplied her with provisions, and agreed to tow her to Falmouth; but, owing to scarcity of fodder for her cargo of horses, she was obliged to proceed on her way, after having towed the *August Korff* about twelve miles. The *August Korff* ultimately reached Falmouth in safety. In an action of salvage, Bucknill, J., relying on the principle laid down in *The Atlas (h)* and *The Camellia* (see above, p. 34), awarded salvage remuneration to the *Acacia* and the *Marquette* on the ground that their services had meritoriously contributed to the ultimate success of the salvage operations (i).

But no salvage rewards if claimants' efforts did not bring vessel into greater comparative safety.

If, however, when the services of the claimants of salvage terminate, the vessel which they have sought to assist is in a position of not less danger than that from which they rescued her, they are not entitled to any salvage reward, however meritorious have been their exertions, and although the vessel is ultimately preserved without loss or injury from the position in which the claimants were obliged to leave her.

Examples.

The ss. *Cheerful (j)*, on the night of the 1st February, 1885, broke down in the English Channel ten miles from Anvil Point. There was a heavy gale blowing, and she was then in a position of risk, but not of imminent risk. The ss. *City of Hamburg* came up in response to signals of distress, and, at the request of the master of the *Cheerful*, took her in tow and proceeded towards Portland. About 3 a.m., after several hours' towing, when the vessels were off the Shambles lightship, the hawser parted and the *Cheerful* dropped anchor. Her position then was one of greater danger than that in which she was when first taken in tow. Later in the morning the *City of Hamburg* made an ineffectual effort to take the *Cheerful* again in tow, and by unskilful, but (as the Court found) not negligent, manœuvring, damaged both

(h) Lush. 518.

(i) (1903) P. 166.

(j) 11 P. D. 3. In addition to the examples cited in the text, see *The*

*Lepanto*, (1892) P. 122; *The Dart* (1899), 8 Asp. M. L. C. 481 (see below, p. 46); *The Kilmahe* (1900), 16 Times L. R. 155.

vessels in the attempt. After making another equally unsuccessful effort, the *City of Hamburg*, being herself in danger, bore away for Portland, and shortly afterwards the *Cheerful* was taken in tow by two tugs from Portland and placed in safety in Portland Roads. Butt, J., held that the owners, master, and crew of the *City of Hamburg* were not entitled to any salvage remuneration, upon the ground that, as the result of the services of the *City of Hamburg* had been temporarily to place the *Cheerful* in a more dangerous position than that in which she was when the services began, it could not be said that those services "had conferred any actual benefit on the salvaged property"—the test of a right to salvage which Dr. Lushington had laid down in *The India* (k).

A second instance is that of *The Benlarig* (l). The ss. *Vesta* on the 25th December, 1887, whilst on a voyage from Fiume to Bordeaux, fell in with a boat's crew flying signals of distress, twelve miles from Cape St. Vincent. The boat belonged to the ss. *Benlarig*, and had been sent to seek assistance for that vessel, which was lying with her engines broken down about twenty miles to the southward. The master of the *Vesta* at once steamed to the *Benlarig*, and agreed to attempt to tow the *Benlarig* to Gibraltar. The *Vesta* towed the *Benlarig* until about 5.30 p.m. on the following day, when one of the two hawsers parted and fouled the *Vesta's* propeller, so that the other hawser had to be cut. The *Benlarig* then drifted to within three or four miles of Cape Trafalgar Light, and anchored in a position which the Court found, as a fact, to be a more dangerous position than that in which she was when the *Vesta* took her in tow. The *Vesta* stood out to sea, her master intending to wait for daylight, but, as a heavy gale continued and his vessel was still in a partly disabled state, owing to the fouling of the propeller, he ultimately decided that the best course was to proceed to Gibraltar and give information as to the position and state of the *Benlarig*, and this he did. The *Vesta* had towed the *Benlarig* about one hundred and thirty miles towards Gibraltar, and in consequence of the towage had sustained considerable damage. The *Benlarig* was subsequently brought into Gibraltar by the ss. *Admiral Rorke*, which, after the *Vesta* had reached Gibraltar, was sent from that place to her assistance. Butt, J.,

(k) 1 W. Rob. 406.

(l) 14 P. D. 3. And see *The Lepanto*, (1892) P. 122.

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held, following his decision in *The Cheerful* (*ubi sup.*), that, as the position in which the *Vesta* had left the *Benlarig* was more dangerous than that in which the *Benlarig* was when the towage commenced, no salvage had been earned by the *Vesta*, but he gave judgment in her favour for the sum of 400*l.*, on the ground that what had passed between the masters of the two vessels constituted a contract on the part of the *Vesta* to attempt to tow the *Benlarig* to Gibraltar, and that this attempt having been made, the *Vesta* was on the contract, though not as a salvor, entitled to a *quantum meruit*, which the learned judge assessed at 400*l.* (*m*).

It is submitted, with due respect, that in these two decisions, and especially in the last, the general principle of 'no success no salvage,' was applied somewhat strictly against the claimants. For, in each case, not only had the services been undertaken at the request of the vessel in distress and had been continued as long as it was practically possible to continue them, but they had been actually beneficial, in so far as they had brought the vessel into a position which, though temporarily one of greater danger than she was in at the moment of their inception, yet was actually nearer (in the case of the *Benlarig*, very much nearer) to the place of safety into which she was ultimately taken, and also to the means of obtaining the assistance which took her there. What would have happened if the *Cheerful* or the *Benlarig* had not been taken in tow must be a matter of mere speculation (*n*); and several cases show that, if it is proved that the services of the alleged salvors have been meritorious in character, but there is a doubt as to whether they have in fact contributed to the ultimate safety of the vessel in danger, the rule of the Court of Admiralty, looking to the general maritime interest in inducing men to assist life and property in danger at sea, has been to lean to the view that in fact they have so contributed. Thus, for example, in the case of *The E. U.* (*o*), where lifeboat-men had gallantly gone on board a vessel in distress near the Brake Sand and tried to navigate her, but, after getting her head to the north, had

Where there is doubt as to value of service, the Court leans to salvors.

(*m*) Cf. *The August Korff* (the *Albuera*), (1903) P. 166.

(*n*) Cf. remarks on this head made by Story, J., *The Henry Eurbank*, 1

Sumner (Amer.), at pp. 414, 415.

(*o*) 1 Spinks, E. & A. 63. For a full statement of the facts of this case, see below, Ch. VI. pp. 189, 190.

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ultimately been obliged, with her own crew, to leave her for the safety of their lives, and she had been subsequently saved by a steamer, Dr. Lushington, in considering their claim for salvage, said: "The learned counsel for the owners has said, with great propriety and great force, 'Take the service altogether, what has it to do towards completing the salvage of the ship?' The answer is, in my opinion, this: No one can tell the precise effect of the vessel being put to the north by those on board the lifeboat. It may have been productive of great benefit, or, on the other hand, it may not have been in the slightest degree instrumental towards the ultimate safety of the vessel. Looking, however, to the whole case, and especially to the intrepid manner in which the salvors went on board the lifeboat, and the general maritime benefit in inducing persons to go on in extreme difficulty to save the lives of those in danger, I shall overrule the tender, and give the sum of 300/." (*p*).

If property in danger is preserved, the circumstance that those whose services have contributed to its preservation have been, in the course of their services, guilty of a mistake, or of negligence or misconduct, which is not of a flagrant kind, but which occasions some damage to the property or expense to its owners, will not operate to deprive the salvors of their right to reward, although it will diminish the amount of it. This was decided by the Privy Council in *The Atlas* (*q*).

Effect of mistake, negligence, or misconduct on the part of salvor.

Does not usually work a forfeiture of all reward.

In that case, the plaintiffs were smacksmen who were bringing into Yarmouth Harbour a derelict they had boarded in the North Sea, when, through the negligence of the tug which they had employed to tow her into the harbour, the vessel swung on to the beach. Before the smacksmen could obtain the assistance required in order to complete the service, as they intended to do, an independent set of salvors took possession of the vessel and got her off. The Privy Council, reversing the decision of Dr. Lushington, held the plaintiffs to be entitled to salvage, and laid down, upon the point of negligence or misconduct affecting a salvage claim, the following proposi-

(*p*) For similar cases of liberality where the services of claimants of salvage, in the result, had proved to be of little or no actual benefit, see

*The Genessee*, 12 Jur. 401; *The Santipore*, 1 Spinks, E. & A. 231.

(*q*) Lush. 518. See further on this subject, Ch. VI. pp. 141—148.

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tion :—" That where success is finally obtained, no mere mistake or error of judgment in the manner of procuring it, no misconduct short of that which is wilful, and may be considered criminal, and that proved beyond a reasonable doubt by the owners resisting the claim, will work an entire forfeiture of the salvage. Mistake or misconduct, other than criminal, which diminishes the value of the property salvaged, or occasions expense to the owners, are properly considered in the amount of compensation to be awarded. Wilful or criminal misconduct may work an entire forfeiture of it ; but that must be proved by those who impute it " (r).

Otherwise, where damage greater than would have befallen ship is the result of the negligence or misconduct.

If, however, it is shown that after rescuing a vessel from a position of danger, the persons claiming as salvors have brought the vessel by their gross negligence into a position of equal danger, in which she actually sustains greater damage than she sustained in her first position, and from which she is ultimately preserved only by additional aid and at considerable expense ; or if the alleged salvors, after performing some beneficial service, are guilty of misconduct whereby, instead of the vessel being ultimately preserved by those salvors, a loss is incurred which cannot clearly be seen to be less than that from which their first efforts had saved her : it has been decided by the Privy Council in the first case (s), and by Sir James Hannen in the second (t), that no salvage reward has been earned by the claimants.

In the first case, *The Duke of Manchester*, the facts, so far as they are material, were that the plaintiff's steam-tug *Copelana* towed the *Duke of Manchester* off the Goodwin Sands, on which she had been stranded, but afterwards, as she was being towed by the steam-tug for the Downs, the *Duke of Manchester*, through the gross negligence of the steam-tug, got hard aground on the Sandwich Flats, where she lay for some days, sustaining more damage there than she had done whilst stranded on the Goodwins, and she was ultimately got off only through the discharge of her cargo into lighters. Held by the Privy Council, affirming the decision of the Court of Admiralty, that the steam-tug was not entitled to salvage.

(r) Lush. 528.

(s) *The Duke of Manchester*, 4 Not. of Cas. 580. See also *The Lockwoods*,

9 Jur. 1017 ; *The Dygden*, 1 Not. of Cas. 115.

(t) *The Yan-Yean*, 8 P. D. 147.

In the second case, *The Yan-Yean*, the facts were shortly as follows:— Chapter II.

The master and crew of the *Yan-Yean*, a vessel in distress, got on board the ss. *Kirkstall*, which was standing by her. The mate and two of the crew of the *Kirkstall* afterwards went on board the *Yan-Yean* but refused to take her master back with them, and also refused the assistance offered by a steam-tug. Finally, from want of local knowledge, they anchored the *Yan-Yean* in an insecure place, where she began to drift, was forsaken by the salvors, and sank. She was subsequently raised by her owners at considerable expense. In the action for salvage brought by the owners and crew of the *Kirkstall*, the owners of the *Yan-Yean* denied that a reward was due and counter-claimed for damages. Sir James Hannen held that the mate of the *Kirkstall* was guilty of misconduct in refusing to take the master of the *Yan-Yean* on board of her, and in refusing to engage the services of the tug; that, if the *Yan-Yean* had been ultimately saved, such misconduct would have worked only a partial forfeiture of the reward; but further, that as the loss arising from the misconduct of the salvors was probably equal to that from which the *Yan-Yean* was first rescued, no salvage reward was due. A counter-claim of the owners of the *Yan-Yean* for damages was dismissed.

There is one distinct and exceptional class of cases in which the Court of Admiralty awards salvage remuneration for services to property in danger although in fact they have not effected its ultimate preservation. Exceptional class of 'engaged' services.

If the master of a ship in distress requests the performance of a service of a salvage nature,—requests, for example, a steamer to stand by her in a storm, or to fetch an anchor from the shore,—and that service is rendered, but the ship for which the service is requested is eventually saved through some other cause, such as a fortunate change of weather; or, secondly, if after the service has begun and whilst they are willing and able to complete it, those who have undertaken it are discharged by the master of the vessel in danger, who prefers, perchance, some other help which offers itself: the Court will not suffer the act of assistance, although unproductive of benefit, to go unrewarded, if it has involved an expenditure of time, labour, or

Chapter II. risk ; and further, in the second case, may include in its award some compensation for the loss which the claimants of salvage have sustained in being prevented from completing the service which they had agreed to render (*u*).

This class of cases is sometimes distinguished as that of 'engaged' or 'employed' services. These terms, however, must not mislead one into supposing that the Court of Admiralty entertains the claim to reward for such services on the basis of a contract entitling the doer of them to payment in any event for work and labour done. In the absence of an express agreement to the contrary, such services give a title to reward in the Court of Admiralty, only if the property in peril, or at least some part of it, is ultimately saved (*x*) ; and the reward for such services is assessed by the Court, not as it would be assessed in an action at law upon a contract for the employment of labour, but upon the more liberal scale of salvage remuneration (*y*). The exception which the Court makes from the general rule that salvage reward is due only for services which result in some actual benefit to the property in peril, appears, from the language used by Dr. Lushington and Sir Robert Phillimore in the cases cited below in the text, to rest, partly on the recognition of a right of the claimant arising in equity (*z*), if not in law, from the fact that the services were requested services, and partly on the consideration of the interests of commerce and navigation.

**Examples.**

The *Undaunted* (*a*) was a vessel which lost both her anchors in a gale of wind in the English Channel, and her master requested the ss. *Resolute*, which had been attracted by her signals of distress, to go to the nearest port and bring off to her an anchor and chain. The *Resolute* accordingly proceeded to Ramsgate,

(*u*) See per Barnes, J., *The Helvetia* (1894), 8 Asp. M. L. C. 264, n.

(*x*) See below, pp. 47—49.

(*y*) See above, Ch. I. pp. 7, 17.

(*z*) "In salvage we have to decide on purely equitable principles." Per Dr. Lushington, *The Norma*, Lush. 124, at p. 127.

(*a*) Lush. 90. See, on this case, the

judgment of the C. A., *The Rempor*, 8 P. D. 115, at p. 117. For recent examples in addition to those cited in the text, see *The Maasdam* (1893), 7 Asp. M. L. C. 400 ; *The Helvetia* (1894), 8 Asp. M. L. C. 264, n. ; *The Cambrian* (1897), 8 Asp. M. L. C. 263 ; *The Sardinia*, Shipp. Gaz., Jan. 14th, 1902 ; *The Ovedio*, Shipp. Gaz. Weekly Summary, July 6th, 1905.

and her master engaged two luggers to bring out an anchor and chain which he put on board of them. The *Resolute* then proceeded to rejoin the *Undaunted*, and succeeded in doing so, but the two luggers, without any fault on their part, failed to reach the ship before she had gained a place of safety. The master of the *Undaunted* then refused to accept the anchor and chain. In the salvage suit the claim of the steamer to salvage was not really contested, but it was urged that no salvage was due to the luggers because their services had been in no way beneficial to the ship. Dr. Lushington held that the luggers as well as the steamer were entitled to salvage remuneration. The grounds upon which he based this decision are fully stated in the judgment:—

“I cannot have any doubt as to the duty of the Court in this case. There is a broad distinction between salvors who volunteer to go out, at their own risk, for the chance of earning reward, and if they labour unsuccessfully they are entitled to nothing; the effectual performance of salvage service is that which gives them a title to salvage remuneration. But if men are engaged by a ship in distress, whether generally or particularly, they are to be paid according to their efforts made, even though the labour and service may not prove beneficial to the vessel. Take the case of a vessel at anchor in a gale of wind, hailing a steamer to lie by and be ready to take her in tow, if required; the steamer does so, the ship rides out the gale safely without the assistance of the steamer; I should undoubtedly hold, in such a case, that the steamer was entitled to salvage award, the how much to be determined by the risk encountered by both vessels, the value of the property at hazard, and the other circumstances of the case. The engagement to render assistance to a vessel in distress, and the performance of that engagement, so far as necessary or so far as possible, establish a title to salvage reward (b). In the present case there was an engagement: the steamer was engaged to go on shore and bring off an anchor and cable to this ship, which had parted from both anchors in a tremendous gale off the Foreland, and was, in my opinion, in very great danger. The engagement, as usual in such cases, was not more specific than was necessary. The true effect of it

(b) Quoted by Sir R. Phillimore, *The Aztec*, 3 M. L. Cas. 326, at p. 327.



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was, 'You are to go and get me an anchor and cable, and do all that is necessary for this purpose.' The steamer proceeds to the shore, and employs two luggers to take the anchor and chain, as being by size and construction fitted to go alongside a large vessel in a seaway; in fact, employs them as the best means of executing the promised service. Now if it was necessary and proper to employ these luggers, their employment forms part of the original order, and their services must be paid for. I am of opinion that the luggers were most properly engaged by the master of the steamer; I am further of opinion that they did all in their power to reach the vessel in distress, they put to sea immediately, and were for nearly three days knocking about the Foreland, and they were only disappointed in effecting their service by the act of God. The ship had driven as far as Lowestoft; she was finally fallen in with by the steamer, and towed by her and another steamer to Gravesend: on the luggers arriving with the cable and anchor, the master of the vessel then refused to accept them. Looking to all the circumstances of the case, the risk of the ship, the long labour of the salvors, and the expense and loss of profits incurred, I shall give the *Resolute* 400*l.*, and to each of the luggers 100*l.*"

The ss. *Maude* (c), on a voyage from Huelva to Hull, became disabled in bad weather about five miles south of the Dudgeon Light, and in the evening of the same day the steam-tug *Walter Stanhope* seeing her signals of distress came up to her. After some discussion between the masters, the master of the tug undertook to try and tow the *Maude* to Hull, and a towing hawser was made fast. Soon afterwards, however, the hawser parted, and, owing to the stress of weather, the *Maude* was obliged to anchor. The tug was requested to stay by the *Maude* during the night and she did so; but on the following morning the master of the *Maude*, instead of availing himself of the services of the *Walter Stanhope*, whose master was ready and willing to complete the service, engaged for a fixed sum, which the master of the tug refused to accept, another steamer, the *Lord Cardigan*, which had come up during the night. The owners, master and crew of the *Walter Stanhope*

(c) 3 Asp. M. L. C. 338. For a similar case see *The Maasdam* (1893), 7 Asp. M. L. C. 400.

sued for salvage. With the question of law raised by the defendant's counsel, viz., that as the *Walter Stanhope* had not in fact performed a salvage service, no reward was due to her, the judgment of Sir Robert Phillimore dealt in the following terms :—

“It is true that it has been held in this Court as a general proposition that a service, however well intended, but not rendered, should not be rewarded. But that is a proposition which, in the circumstances of the case, induces the Court to consider the reason why the service is not rendered. The fair result of the evidence is that the *Walter Stanhope* was ready to do her best to the vessel in distress, and would have done so if the other engagement had not been made. The *Walter Stanhope* is not entitled to be rewarded on the scale which would have been her due had she towed the *Maude* to Yarmouth or Hull. She was there the whole night, and she ought not to have been discarded (*d*), and is entitled to be rewarded for the services rendered, and to some compensation for the loss she has sustained by not being able to complete the service agreed upon.”

The decision of Sir R. Phillimore in *The Melpomene* (*e*) is, probably, to be explained as belonging to the same class of exception (*f*). In that case the facts were as follows. The tug *Resolute* was lying under steam in the Mersey, when she saw the *Melpomene* in collision with a screw-steamer, and drifting rapidly up the river with the flood tide. The *Resolute* immediately followed them for the purpose of rendering assistance, and attempted to get a hawser on board the *Melpomene* but without success. The *Melpomene* then drifted further up the river and showed blue lights as signals for assistance, when the *Resolute* made another attempt to take her in tow, and a hawser was passed between the two vessels; the *Resolute* then steamed ahead, but shortly afterwards it was discovered that the hawser came away, and that in fact it had not been made fast on board the *Melpomene*. The tug *Fiery Cross* subsequently came up, and by her assistance and that of some other tugs (of which the *Resolute* was not

(*d*) See, on this, per Sir F. Jeune, *The Maasdam*, *ubi sup.* at p. 401, cited below, Ch. VIII. p. 197.

(*e*) L. R. 4 A. & E. 129. Cf., as to there being an ‘employment’ in

such a case, *Henessy et al. v. Ship Versailles and Cargo*, 1 Curtis (Amer.) 353, at p. 359.

(*f*) See per Phillimore, J., *The Dart*, 8 Asp. M. L. C. 481, at p. 483.

Chapter II. one), the *Melpomene* was taken to a place of safety. Sir Robert Phillimore awarded the *Resolute* 50% as salvage remuneration.

“With regard to the question whether the *Resolute* is entitled to any remuneration at all, I have had considerable difficulty, seeing that her intention, however good, was according to the evidence, practically unexecuted; but on the other hand, I think there are no cases which would stand in the way of my adopting as a principle this proposition, which appears to me of considerable importance to the interests of commerce and navigation, especially at the present time, namely, that where a vessel makes a signal of distress and another goes out with the *bonâ fide* intention of assisting that distress, and, as far as she can, does so, and some accident occurs which prevents her services being as effectual as she intended them to be, and no blame attaches to her, she ought not to go wholly unrewarded.”

*The Dart* (g) is a more recent case on the same point. The material facts of that case were as follows:—The ss. *Dart* became disabled in the Atlantic through the loss of her propeller. In response to signals of distress, a steamship, the *Newby*, came up with her and by agreement commenced to tow her on a course for Queenstown. The towage had not proceeded far when the hawser broke, and the *Newby*, although she stayed by all night with the intention of renewing the attempt to tow, rendered no further assistance, proceeding on her way the next day. Phillimore, J., after finding as a fact that the *Newby* had rendered no material assistance, said: “She can get no reward unless she gets it under the doctrine that she was engaged. If she had been engaged to stand by, or if she had been engaged to try to tow, then I should have been able to give her some award; but she was engaged to tow. I construe that to mean to tow into a port of safety, and she failed in doing that. Now I can find no authority which would give her in those circumstances any remuneration.” The learned judge then referred to *The Melpomene* (*ubi sup.*), which he distinguished from the case before him on the ground that in the former case the fault of those on board the salved vessel alone prevented the salving vessel from fulfilling her engagement; and, continuing, he made the following statement of the law:—“If a salvor is employed to do anything and does it, and the property is

(g) (1899), 8 Asp. M. L. C. 481.

ultimately saved, he may claim a salvage award, though the thing which he does, in the events which happen, produces no good effect. If a salvor is employed to complete a salvage and does not, but without any misconduct on his part, fails after he has performed a beneficial service, he is entitled also to a salvage award. If a salvor is employed to do a thing and does not do it, and no doubt uses strenuous exertions and makes sacrifices, but does no good at all, then it seems to me he is not entitled to salvage" (h).

Whilst it is apparent from a review of the cases which have been cited that success so far as regards the efforts of those who claim as salvors cannot be said, without important qualifications and exceptions, to be an essential ingredient of salvage, it is most necessary to bear in mind that unless, by some means, the *res* to which the claimants' services have been rendered, or some part of it, reaches a place of safety, no right to salvage reward, in the proper sense of the term, can arise. There may, indeed, be circumstances (i) in which the master of a ship in danger or distress is justified in binding the shipowner by a special agreement to pay for certain assistance independently of the ultimate safety of the vessel (j). An illustration of this is afforded by *The Alfred* (k). The steamship *Wellfield* having found the steamship *Alfred*, on the 12th February, 1883, off Cape Finisterre in a disabled condition, towed her in heavy weather until the 14th February, when, in consequence of the condition of the *Alfred*, the master of the *Wellfield* proposed to abandon her. However, at the desire of the master of the *Alfred*, it was agreed in writing that the *Wellfield* should stand by the *Alfred* as long as possible, and that the *Wellfield* and her owners should be paid for the time and towing already done and to be done from the 12th February, 1883. The *Wellfield* thereupon again took the *Alfred* in tow, but on the 16th February, owing to heavy weather, it was found necessary to abandon her, after which she was totally lost. In an action for towage against the owners of the *Alfred*, the Court (Butt, J.) held that the agree-

The preservation of at least some part of the *res* is always essential to a proper salvage claim.

Special circumstances may justify special agreement for payment irrespective of success.

(h) *Id.* at pp. 482, 483.

(i) See on this point, *The Renpor*, per Brett, M. R., 8 P. D. 115, at p. 118.

(j) As to the effect upon the award of such an agreement where the ser-

vices are successful, see below, Ch. VI. p. 163.

(k) 5 Asp. M. L. C. 214. Cf. also *The Prinz Heinrich*, 13 P. D. 31; *The Edenmore*, (1893) P. 79; *The Strathgarry*, (1895) P. 264.

Chapter II. ment entered into by the master of the *Alfred* was a reasonable one, and one into which, in his position as agent *ex necessitate* for his owners, he had authority to enter, and it awarded the plaintiffs the sum of 400*l.* in respect of the services (for four days) rendered prior to and after the agreement. Upon such an agreement an action *in personam* might be maintained either in the Admiralty or in the Queen's Bench Division of the High Court of Justice. But, then, it is not a salvage agreement. A salvage agreement is an agreement which fixes, indeed, the amount to be paid for salvage, but leaves untouched all the other conditions necessary to support a salvage award, one of which is the preservation of some part at least of the *res*, that is, ship, cargo, or freight (*l*).

But, in such case, the agreement is not properly a salvage agreement.

The general law is clearly laid down in decided cases.

*The Renpor.*

The necessity of this condition being satisfied, in order to maintain a claim for salvage, whether by proceedings *in rem* or *in personam*, has been laid down in several recent judgments (*m*), but it is perhaps most clearly set forth by the Court of Appeal in *The Renpor* (*n*). That was an action *in personam* for salvage brought by the owners, master and crew of the ss. *Mary Louisa*, against the owners and master of the ss. *Renpor*, under the following circumstances:—

The *Mary Louisa*, whilst on a voyage from Newcastle to New York, in April, 1882, came up with the *Renpor*, which was seriously damaged and was exhibiting signals of distress in a field of ice. The master of the *Mary Louisa* was asked to stand by the *Renpor*, and he consented to do so upon the terms of a written agreement, to the following effect:—

“*Mary Louisa*, April 13, 1882.

“It is hereby agreed, between T. G., master of the above steamer, and R. O., master of the steamship *Renpor*, that the above steamer, *Mary Louisa*, agrees to stay by me until I am in a safe position to get to port for the sum of 1200*l.*, my vessel being badly holed in starboard bow near collision bulkhead.”

The *Mary Louisa* stayed by the *Renpor* all night. In the morning the *Renpor* sank, after her crew had been taken on board the *Mary Louisa*, which ultimately brought them home in safety.

(*l*) See *The Hestia*, (1895) P. 193, at p. 199. 28; and the cases cited in *The Renpor*, 8 P. D. 115.

(*m*) See *The Cargoex Sarpedon*, 3 P. D. (*n*) 8 P. D. 115.

In the action the defendants demurred to the statement of claim on the ground that the agreement had not been performed, and that no cause of action had arisen on it; that no action for salvage would lie, as no property of the defendants had been saved. Sir Robert Phillimore upheld the demurrer, and the Court of Appeal affirmed his decision. In the judgment of the Court of Appeal, which was delivered by Brett, M. R. (Cotton and Bowen, L. JJ., concurring), it was pointed out that the claim failed both on principle as a salvage claim, and upon the true construction of the contract itself. It failed in principle as a salvage claim, because it lacked the element which is "invariably required by Admiralty law in order to found an action for salvage," viz., that "there must be something saved more than life, which will form a fund from which the salvage may be paid; in other words, for the saving of life alone without the saving of ship, cargo, or freight, salvage is not recoverable in the Admiralty Court." It failed also upon the construction of the contract, because, rightly interpreted, the agreement therein contained was a "proper salvage agreement, which fixes the amount of salvage to be paid for services both to life and property, but leaves untouched all the other conditions necessary to support an award." "As on principle," said his lordship, "and on the construction of the contract itself, there must be something saved, I am of opinion that neither owner nor master is liable in this action, because no *res* has been saved."

It is worth while to notice that, in the course of this judgment, Brett, M. R., referred to *The Undaunted* (o), which had been relied upon by the plaintiffs, but expressly refrained from expressing any opinion as to the correctness of the decision, whilst pointing out that in any case it was no authority for the plaintiffs, as in *The Undaunted* the fact was that the ship was saved, and therefore there was a fund from which the payment of salvage could be made. His lordship expressly disapproved of the dictum of Dr. Lushington in *The E. U.* (p) (if correctly reported), that salvage might be payable in respect of services to a vessel, although that vessel was lost.

(o) Lush. 90; *sup.* p. 42.

(p) 1 Spinks, E. &amp; A. 63, at p. 64.

## CHAPTER III.

## OF THE SUBJECTS OF SALVAGE.

*The Jurisdiction of the Court of Admiralty in former times.*

*The Merchant Shipping Act, 1894.*

*Its Provisions considered (a) in regard to Salvage of Property ;*

*(b) in regard to Salvage of Life.*

*Life Salvage recoverable only when either Ship, Cargo, or Freight, is also saved.*

*Of Freight.*

*The Exemption of Government Property from Arrest for Salvage.*

The jurisdiction of the Court in former times.

Not within the body of a county.

Statutory jurisdiction.

IN the case of the salving of property on the high seas, whatever may be the nationality of the salvors or of the property, the Court of Admiralty has long exercised the right of decreeing a salvage reward if the property has been brought within the jurisdiction of the Court (a). If, however, the salvage took place above low-water mark, the Court had no jurisdiction in respect of it before the passing of the statute 1 & 2 Geo. 4, c. 75, s. 31, which gave the Admiralty Court, in regard to salvage services between high and low-water mark, concurrent jurisdiction with the Courts of common law; and it was not until the year 1840 (under the 3 & 4 Vict. c. 65, s. 6), that it could entertain claims arising within the body of a county, and, even then, only if they related to the salvage of a ship or sea-going vessel. By the 9 & 10 Vict. c. 99, s. 40, this last mentioned limitation was removed. The law now in force is contained in the provisions of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60) (b), which will presently be considered.

(a) See *The Two Friends*, 1 C. Rob. 17 & 18 Vict. c. 104; the 24 Vict. 271. c. 10; and the 25 & 26 Vict. c.

(b) Consolidating provisions in the 63.

It seems that under the old law, certainly as late as the year 1799, in cases of civil salvage (in cases of prize it was otherwise (c)), although the service had been rendered on the high seas, yet, if the property was afterwards landed and the salvors ceased to retain possession of it, the process of the Court of Admiralty *in rem* was not available to the salvors. "In cases of wreck and derelict," said Lord Stowell, referring to this in *The Two Friends* (d), "I have known many instances of great hardship and, I will add, of crying injustice, where salvors have been amused with negotiations till the goods were landed, and then the authority of this Court has been defied, and the just demands of the claimants laughed to scorn."

With regard to the salvage of life alone, and apart from property, the Admiralty Court first obtained some power to decree reward in respect of it by the statute 1 & 2 Geo. 4, c. 75, ss. 8, 9 (e), and further provisions were contained in the statute 9 & 10 Vict. c. 99, s. 10. Under the earlier of these statutes life salvage was awarded by Sir John Nicholl in *The Queen Mab* (f), and under the later by Dr. Lushington in *The Silver Bullion* (g). In the period prior to these statutes, the merit of the salvor of life was recognised only where he was also himself a salvor of property. "Where no property had been saved, and life alone had been preserved from destruction, no suit for salvage reward could be maintained. The reason for this state of the law was that no property could be arrested applicable to the purpose. There could be no proceeding *in rem*—the ancient foundation of a salvage suit. In some cases it happened that one set of persons exclusively saved life, and another wholly distinct set

Salvage of life alone originally not entitled to reward.

(c) *The Two Friends*, 1 C. Rob. 271, at p. 283; *The Rapid*, 3 Hagg. 419, at p. 422.

(d) 1 C. Rob. 271, at pp. 282, 283. The passage is referred to by Betts, J. (1845), *The Brig John Gilpin*, Olcott (Amer.) 77, at pp. 82, 83.

(e) This appears to have been the view of Sir J. Nicholl, according to his decision in *The Queen Mab* (3 Hagg. 242). But Dr. Lushington expressed a contrary opinion in his judgment in *The Zephyrus*, referred to in the next

note; and in *The Silver Bullion*, 2 Spinks, E. & A. 70, at p. 74.

(f) 3 Hagg. 242. It is suggested by Dr. Lushington in *The Zephyrus* (1 W. Rob. 329, at p. 333) that this decision is to be explained by the fact that *The Queen Mab* was a derelict, and that her owners did not oppose: *sed qu.*

In *The Zephyrus* no property at all was saved, and this fact alone would now be, as it was then, a fatal objection to the claim of the salvors of life. See above, p. 47, and below, p. 65.

(g) 2 Spinks, E. & A. 70.



**Chapter III.** saved the ship and cargo; but in this case also the salvors of life could not render the property amenable to their claims. But where life and property had been saved by one set of salvors, it was the practice of the Court to give a larger amount of salvage than if the property only had to be saved, and this doctrine rests on high authority. The practice, too, was that all the property saved should be liable to pay such increased rate of salvage, the ship, the freight, and the cargo each in proportion to its value" (*h*). By the Act now in force, the provisions of which will presently be referred to, the saving of life is made the ground of an independent and substantive right to salvage reward in the case of all British ships, and, with some limitations, in the case of foreign ships also.

**Statutory provisions.**

It will now be convenient to state the principal statutory provisions at present in force as to the subjects of salvage and as to the jurisdiction of the Court of Admiralty in regard to them.

57 & 58 Vict.  
c. 60.

"Where services are rendered wholly or in part within British waters in saving life from any British or foreign vessel (*i*), there shall be payable to the salvor by the owner of the vessel, cargo, or apparel saved, a reasonable amount of salvage to be determined in case of dispute in manner hereinafter mentioned.

"Salvage in respect of the preservation of life when payable by the owners of the vessel shall be payable in priority to all other claims for salvage.

"Where the vessel, cargo, and apparel are destroyed, or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Board of Trade may, in their discretion, award to the salvor, out of the Mercantile Marine Fund (see below, p. 68), such sum as they think fit in whole or part satisfaction of any amount of salvage so left unpaid." (Merchant Shipping Act, 1894, s. 544.)

"When it is made to appear to Her Majesty that the

(*h*) Per Dr. Lushington, *The Fusilier*, Br. & L. 341, at p. 344, n.; and cf. also the judgment of the P. C. *ib.* p. 351, *The Johannes*, Lush. 182, at p. 187; per Sir R. Phillimore, *The*

*Willem III.*, L. R. 3 A. & E. 487, at p. 494.

(*i*) See on this, *The Pacific*, (1898) P. 170; *The Jørgensen v. The Neptune Fishing Co.*, Sc. 4 Sess. Cas. (5th), 992; and below, p. 63.

Government of any foreign country is willing that salvage should be awarded by British Courts for services rendered in saving life from ships belonging to that country, when the ship is beyond the limits of British jurisdiction, Her Majesty may, by Order in Council, direct that the provisions of this part of this Act with reference to salvage of life shall, subject to any conditions and qualifications contained in the Order, apply, and those provisions shall accordingly apply to those services as if they were rendered in saving life from ships within British jurisdiction." (Merchant Shipping Act, 1894, s. 545.)

"Where any vessel is wrecked, stranded, or in distress at any place in or near the coasts (*j*) of the United Kingdom or any tidal water within the limits of the United Kingdom, and services are rendered by any person in assisting that vessel or saving the cargo or apparel of that vessel or any part thereof, and where services are rendered by any person other than a receiver in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, apparel, or wreck, a reasonable amount of salvage to be determined in case of dispute in manner hereinafter mentioned." (Merchant Shipping Act, 1894, s. 546.)

"Subject to the provisions of this Act (*k*), the High Court, and in Scotland the Court of Session, shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed on the high seas or within the body of any county, or partly on the high seas and partly within the body of any county, and whether the wreck in respect of which salvage is claimed is found on the sea or on the land, or partly on the sea or partly on the land" (*l*). (Merchant Shipping Act, 1894, s. 565.)

(*j*) See *The Fulham*, (1898) P. 206, at p. 214.

(*k*) As to the jurisdiction of inferior Courts, see Williams and Bruce, Adm. Fr. 3rd ed. p. 149 *et seq.*

(*l*) See on the corresponding section of the M. S. Act, 1854 (17 & 18 Vict. c. 104, s. 476), *The Johannes*, Lush. 182, at p. 189; *The Willem III.*, L. R. 3 A. & E. 487, at p. 494. It was held in *The Johannes* that the provisions of

the M. S. Act, 1854, did not give the Admiralty Court jurisdiction over salvage of life only from a foreign ship, performed on the high seas, at a distance of more than three miles from the shore of the United Kingdom. The jurisdiction was extended by the 24 Vict. c. 10, s. 9, and the 25 & 26 Vict. c. 63, s. 59, which are consolidated in the sections of the M. S. Act, 1894, set out above.

**Chapter III.**

Summary of  
effect of  
statutory  
provisions.

The general effect of these statutory provisions is that:—

- (1.) The Admiralty jurisdiction extends to all cases of salvage of property, irrespective of the locality of the salvage service.
- (2.) The saving of life from *British* vessels is an independent ground for salvage reward, and stands on an equal footing with the saving of property.
- (3.) The right to salvage reward for the saving of life from *foreign* vessels is made dependent upon the service having taken place wholly or in part within British waters, or from a vessel belonging to a state in regard to which an Order in Council has been made under the Merchant Shipping Act, 1894, s. 545.
- (4.) As against the owner of the vessel from which the life is saved, the claim for salvage of life takes precedence over any other salvage claim.
- (5.) In case of the vessel, cargo, and apparel not being saved, or proving insufficient to meet the claims of the salvors of life, the Board of Trade may award remuneration to them out of the Mercantile Marine Fund.

Their judicial  
interpreta-  
tion.

Several important points which require notice have been judicially decided in regard to the language of these statutory provisions, both as to the salvage of property and as to the salvage of life.

“Salvage.”

The expression “Salvage,” as defined by the Merchant Shipping Act, 1894, s. 510, “includes all expenses properly incurred by the salvor in the performance of the salvage services.” The question as to what expenses the salvor can recover under this section will be dealt with later (*m*).

“Owner.”

The expression “Owner of the vessel” in sects. 544 and 546 of the Merchant Shipping Act, 1894, appears to include all persons interested in the vessel. The corresponding expression in the Merchant Shipping Act, 1854, s. 458, “Owners of such ship or boat,” was held by Dr. Lushington in *The Louisa* (*n*), where the question was whether or not it included mortgagees, to include all persons interested in the ship or boat.

(*m*) See Ch. VI. pp. 155—163.

(*n*) Br. & L. 59.

As defined by sect. 742 of the Merchant Shipping Act, 1894, Chapter III.  
 “Vessel” (o) “includes any ship or boat, or any other descrip- “Vessel.”  
 tion of vessel used in navigation,” and “Ship,” “includes every  
 description of vessel used in navigation not propelled by oars.”  
 The words of inclusion are not to be read as meaning “shall be  
 confined to”; nor is the expression “not propelled by oars” to  
 be construed as excluding every vessel which is at any time  
 propelled by oars. In *Ex parte Ferguson* (p), where questions  
 were raised as to the interpretation of the word “ship” in the  
 Merchant Shipping Act, 1854, Lord Blackburn, in the course of  
 his judgment (in which Mellor and Lush, JJ., concurred),  
 made the following observations:—“It is said, on behalf of the  
 master and mate, that the fishing coble cannot be a ‘ship.’  
 She is twenty-four feet long; she is not entirely decked over;  
 she has two masts and a rudder, which are removable, and she may  
 be propelled by four oars. She goes out well to sea, and, though  
 the oars are used to get her out of harbour, they are merely  
 auxiliary to the use of sails. It is said, on behalf of the Board  
 of Trade, that that is a ‘ship.’ The chief argument against  
 that proposition is by referring to the interpretation clause  
 (17 & 18 Vict. c. 104, s. 2), which says, “‘ship’ shall include  
 every description of vessel used in navigation not propelled  
 by oars.’ And the argument against the proposition is one  
 which I have heard very frequently, viz., where an Act says  
 certain words shall include a certain thing, that the words must  
 apply exclusively to that which they are to include. That is  
 not so; the definition given of a ‘ship’ is in order that ‘ship’  
 may have a more extensive meaning. Whether a ship is pro-  
 pelled by oars or not, it is still a ship, unless the words ‘not  
 propelled by oars’ exclude all vessels which are ever propelled  
 by oars. Most small vessels rig out something to propel them,  
 and it would be monstrous to say that they are not ships.  
 What then is the meaning of the word ‘ship’ in this Act? It  
 is this, that every vessel that substantially goes to sea is a  
 ship.”

(o) The corresponding expression in  
 the M. S. Act, 1854, was “ship or  
 boat.” But, as the definition of  
 “ship” in that Act (s. 2) was the  
 same as appears in the present Act,

it would seem that no wider inter-  
 pretation can be given to the word  
 “vessel” than was formerly given to  
 “ship or boat.”

(p) L. R. 6 Q. B. 280, 290,

Chapter III.

In the case of *The Mac (q)*, the Court of Appeal (Lord Coleridge, L. C. J., Brett, M. R., and Cotton, L. J.) held, reversing on this point the judgment of Sir Robert Phillimore, that a hopper barge which had no masts or sails, and which was not navigable without external assistance, was a "ship" within the meaning of sect. 2 and the salvage sections of the Merchant Shipping Act, 1854. In the course of his judgment, Cotton, L. J., pointed out that, as sect. 19 of that Act spoke of "ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts" (*r*), an interpretation such as that suggested by Blackburn, J., in the concluding passage of the quotation from his judgment in *Ex parte Ferguson (ubi sup.)*, which would restrict the meaning of the word "ship" in the Act to a sea-going vessel, is too narrow.

In the case of *Gapp v. Bond (s)* the Court of Appeal (Lord Esher, M. R., Fry and Lopes, L. JJ.) held the word "vessel," in the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), to include a dumb barge propelled by oars and plying on the river Thames for the purpose of carrying goods, wares, and merchandise.

An electric launch, in which passengers were taken for hire on pleasure trips on an artificial lake half-a-mile long and one hundred and eighty yards wide, was held by Lord Coleridge, L. C. J., and Charles, J., in *The Mayor, &c. of Southport v. Morris (t)*, having regard to the size of the lake, not to be a vessel used in navigation within the meaning of the definition of "ship" in the Merchant Shipping Act, 1854.

In *The Gas-Float Whitton No. 2 (u)*, a gas-float or buoy moored as a beacon, which in some respects resembled a ship but was incapable of navigation, was held by the House of Lords, affirming the decision of the Court of Appeal and (on this point) of the Divisional Court of Admiralty, not to be a "ship" within the meaning of the Merchant Shipping Act, 1854. "I think," said Sir Francis Jeune, "that it is an essential part of the idea of a ship that she should be used or intended to be used in navigation—that is to say, in the

(q) 7 P. D. 36; (C. A.), *ib.* 126.  
The case is more fully reported, 46  
L. T. N. S. 906.

(r) These words appear in the corresponding section (3) of the M. S.

Act, 1894.

(s) 19 Q. B. D. 200 (C. A.)

(t) (1893) 1 Q. B. 359.

(u) (1895) P. 301; (C. A.), (1896) P. 42; (1897) A. C. 337.

transport of persons or things. I do not say that every structure used for transport is a ship, because a raft may be a means of transport (x), but transport of some kind seems to me *sine quâ non*. It does not appear to me enough that the object in question should be used for purposes of navigation” (y). The Court of Appeal and the House of Lords supported this view. Lord Esher, M. R., at the conclusion of his judgment in the Court of Appeal, said: “Whether salvage could be granted for the saving of what is called a lightship may be doubtful. I incline to think not. If it is, it is only because the lightship would be held to be a ship. As to some instances which were proposed, viz., the *Victory* in Portsmouth Harbour, I have no doubt that she is a ship. So was the *Dreadnought*, used for years as a hospital. So is a ship used as a coal-hulk (z). But the thing in question (a gas-buoy) is not a ship in any sense” (a).

Dr. Lushington in *A Raft of Timber* (b) refused to treat a raft as a ship. “This,” he said, “is neither a ship [n]or a seagoing vessel; it is simply a raft of timber” (c). But, as Lord Herschell has pointed out (d), rafts are frequently so constructed as to be navigable; they may have crews resident on board; and they are used for the transport of the timber of which they consist, and sometimes also of timber placed upon them.

In *Corbett v. Pearce* (e), the Divisional Court of the King’s Bench (Lord Alverstone, L. C. J., Wills and Kennedy, JJ.) held that “ship” in the Merchant Shipping Act, 1854, would include a barge navigated only on a tidal water.

“Boat,” which is included in the meaning of the word “vessel” by virtue of s. 742 of the Merchant Shipping Act, 1894, seems to be a still more elastic word than “ship,” and it would, it is submitted, include any vessel of small size intended and adapted for the conveyance of persons or goods

(x) See the text below as to rafts.

(y) (1895) P. 301, at p. 307.

(z) But see *European and Australian Royal Mail Co. v. P. and O. Co.*, 14 L. T. (N. S.) 704, where a ship, which had been used for four years as a coal-hulk, was held not to be a “ship,” so as to be by the M. S. Act, 1854,

transferable only by bill of sale.

(a) (1896) P. 42, at p. 64.

(b) 2 W. Rob. 251.

(c) *Ib.* at p. 255.

(d) *The Gas-Float Whitton*, No. 2, (1897) A. C. 337, at p. 345.

(e) (1904) 1 K. B. 422.

Chapter III. upon the water. Lord Esher, in his judgment in *Gapp v. Bond* (*ubi sup.*), held that the term "vessel" in the Bills of Sale Act, 1878, would not include a raft or a Thames wherry, but would include anything beyond a mere boat. "Boat" clearly would cover a wherry; it might perhaps cover a raft. The word appeared in the Merchant Shipping Act, 1854, but neither under that nor under the present Act has it been the subject of judicial interpretation in any reported case.

The result of these decisions appears to be that "vessel" includes whatever can be called a ship or a boat in popular language, and any vessel used in navigation which is not habitually propelled by oars, although used only in inland waters.

"Cargo." "Cargo" includes all merchandise on board the salvaged vessel to whomsoever it may belong. It has been suggested by Lord Herschell that it should be extended so as to cover goods in tow. "Where goods are being towed from place to place, although they are not, strictly speaking, cargo, yet they partake of its character and are closely analogous to it. They are being transported from place to place by a vessel. Their transport is a maritime adventure of precisely the same nature as the carriage of goods in the body of a ship. All the grounds of expediency in which the law of salvage is said to have had its origin would seem to apply to the one case as to the other. It may be that in salvage law a broad and liberal construction should be extended to the word "cargo," so as to embrace goods in the course of being transported by a vessel, though not inside it" (*f*).

No personal effects of seamen and passengers.

It does not include, so far as regards the liability to arrest and contribution to salvage, the personal effects of the master or the crew (*g*), or such wearing apparel and personal effects of passengers as are on their persons, or have been taken on ship-board for daily use during the voyage. A question as to such property of passengers was raised in *The Willem III.* (*h*); and Sir Robert Phillimore decided that the wearing apparel of

(*f*) *The Gas-Float Whitton*, No. 2, Chitty) i. 242; *Marvin on Wreck and Salvage*, 133.  
(1897) A. C. 337, at pp. 344, 345.

(*g*) See *Beawes, Lex Merc.* (6th ed. (*h*) L. R. 3 A. & E. 487, 490.

passengers, and other effects carried by them for their daily personal use, may be considered to be privileged. There appears, however, to be no legal principle for the exemption from arrest and contribution to salvage of such luggage and valuables as are not in daily use and are for the time in the custody of the ship and not of the passengers, although in practice these also are generally treated as exempt. If they are liable to claims for a general average contribution, one can see no reason in principle why they should not also be liable to contribute to the recompense for salvage services (*i*); and it has been held in the United States District Court, Southern District of New York (*k*), that such things should contribute to general average. In the case referred to, Brown, J., after elaborately reviewing the authorities (*l*), and citing certain modern codes, concludes, "that by the general maritime law, aside from the provisions of recent codes, the only baggage exempt is apparel, and such other articles as the passengers wear, with the usual changes for the voyage, and as they actually take with them for use, which are in that sense attached to their persons; not trunks delivered into the exclusive charge of the ship, which are neither in use nor in the passenger's possession during the voyage. The modern codes above cited differ as to the extent to which this exemption is allowed. When, as in this country, there is no statutory provision on the subject, and no adjudication, the omission of the luggage from assessment, beyond that actually in the possession of the passenger and in use on the voyage, must be regarded as a favour or courtesy to passengers, or as being a waiver for practical reasons, rather than a strict legal right to exemption under the general maritime law; unless, indeed, the practice not to detain and hold luggage for a general average adjustment were shown to have been so long settled and acted upon as to form one of the implied terms and conditions upon which passengers embark" (*m*).

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As to liability to arrest of luggage and valuables in custody of ship, *qu*.

(i) See *Strang, Steel & Co. v. Scott & Co.*, 14 App. Cas. 601, at p. 608.

(k) *Heye v. North German Lloyd*, The New York Maritime Register, Dec. 7th, 1887, p. 5.

(l) Emerigon, *Traité des Assur.* (ed. Boulay-Paty) i. 626, 627; Beawes, *Lex Mercat.* (6th ed. Chitty) i. 243; Pardessus, *Cour de Droit Commercial*

(1856 ed.), ii. 305, 306; Valin, *Comm.* (1766 ed.), ii. 199, 200; Boulay-Paty, *Cour de Droit Comm.* iv. 562. And see Arnould, *Marine Ins.* vol. ii. s. 972 (7th ed.); Abbott, *M.S.*, 14th ed. p. 795.

(m) That the trunks and other luggage of passengers, if jettisoned, must be contributed for in general average,



**Chapter III.** Ship's provisions, according to the analogy of general average (*n*), would not be held to be liable to arrest for salvage.

**"Wreck."** "Wreck" was anciently limited to those portions of ship or cargo which were stranded. The term, according to Coke (*o*), in legal understanding, is applied to such goods as after shipwreck at sea are by the sea cast upon the land. "Nothing shall be said '*irreccum maris*' but such goods only which are cast or left on the land by the sea" (*p*). For the purposes, however, of the Merchant Shipping Act, 1894, "wreck" is declared by s. 510 to include jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water; and it appears to be used in relation to salvage, to signify generally, beside derelict, any part or fragment of ship or cargo, whether aground or afloat. But in order to be "wreck" within the meaning of this Act, the salvaged property must have previously formed part of a vessel, or of its apparel or cargo (*q*). Where planks of timber had been moored in a river above a harbour and had accidentally got adrift and floated down to the sea, and had there been taken possession of by the claimants of salvage, the Court of Exchequer held that there had been no salvage of "wreck" within the Merchant Shipping Act, 1854 (*r*). And in a more recent case (*q*) a gas-float moored as a beacon which had got adrift was held not to be "wreck" within the same Act.

By the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), s. 21 and Sch. I. Art. 22, all fishing boats, rigging, gear, or other appurtenances of fishing boats, nets, buoys, floats, or other fishing implements, found or picked up at sea are to be deemed to be included in the term "wreck" as used in any Act relating to

seems to be incontestable. Cf. Boulay-Paty, *Cour de Droit Commercial*, vol. iv. p. 562.

(*n*) *Brown v. Stapleton and Others*, 4 Bing. 119. But see Arnould, *Marine Ins.* vol. ii. s. 972 (7th ed).

(*o*) 2 Coke, Inst. 167.

(*p*) *Sir Henry Constable's Case*, 3 Co. Rep. Pt. 5, 106 a, cited by Brett, *M. R.*, *Cargo ex Schiller*, 2 P. D. 148. Cf. also per Sir Leoline Jenkins,

Wynne's Life, vol. i. p. lxxxix. For the effect of the provisions of the M. S. Act, 1894, relating to wreck, see Abbott, *M. S.*, 14th ed. pp. 993—997. Cf. also the Board of Trade Instructions to Receivers of Wreck and other officers in respect of Wreck and Salvage, 1895; Arts. 89-128.

(*q*) *The Gas-Float Whitton*, No. 2, (1895) P. 301; (C. A.) (1896) P. 42; (1897) A. C. 337.

(*r*) *Palmer v. Rouse*, 3 H. & N. 505.

Merchant Shipping. The Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22), s. 10 and Sch. I. Art. 25, contains similar provisions, only adding to the list of articles above-mentioned small boats belonging to fishing boats, and lines. Chapter III.

The terms “flotsam,” “jetsam,” and “lagan,” are thus explained in *Sir Henry Constable’s Case* (s):— “Flotsam, jetsam, and lagan.”

“‘*Flotsam*’ is where a ship is sunk or otherwise perished and the goods float on the sea; ‘*Jetsam*’ is where the ship is in danger of being sunk, and, to lighten the ship, the goods are cast into the sea, and afterwards, notwithstanding, the ship perish. ‘*Lagan*’ (*vel potius ‘ligan’*) is when the goods which are so cast into the sea and afterwards the ship perishes, and such goods are so heavy that they sink to the bottom, and the mariners, to the intent to have them again, tie to them a buoy, or cork, or such other thing that will not sink, so that they may find them again, and *dicitur lig. a ligando*; and none of these goods which are called *jetsam*, *flotsam*, or *ligan*, are called wreck so long as they remain in, on or upon the sea; but if any of them by the sea be put upon the land, then they shall be said wreck.”

“Derelict” is a term legally applied to a thing which is “Derelict.” abandoned and deserted at sea by those who were in charge of it, without hope on their part of recovering it (*sine spe recuperandi*), and without intention of returning to it (*sine animo revertendi*) (t). It is in practice usually applied only to a vessel, but it might properly be used of cargo also apart from a vessel (u). The question whether a vessel is or is not to be adjudged a derelict is decided by ascertaining, not what was actually the state of things when she was quitted by her master

(s) 3 Coke’s Rep. Pt. 5, 106, a & b. See, also, per Sir Leoline Jenkins, *Wynne’s Life*, vol. i. p. lxxxix.

(t) See the judgment of the Privy Council in *Cosman v. West*, 13 App. Cas. 160, at pp. 180, 181; per Lord Stowell, *The Aquila*, 1 C. Rob. 37, at p. 40; per Dr. Lushington, *The Coromandel*, Swab. 205, at pp. 208, 209; *The Gertrude*, 30 L. J. Adm. 130, at p. 131; per Dr. Stock, *The Cosmopolitan* (Irish), 6 Notes of Cases,

Suppl. xvii, xx—xxviii; per Sir R. Phillimore, *The Zeta*, L. R. 4 A. & E. 460, at p. 462; *Marvin on Wreck and Salvage*, p. 133.

(u) See *The Samuel*, 15 Jur. 407, at p. 410; *The King v. Property Derelict*, 1 Hagg. 383; *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 270; *The King v. Two Casks of Tallow*, *ib.* 294; *Boiler ex Elephant* (1891), 64 L. T. (N. S.) 543.

**Chapter III.** and crew, but what were their intention and their expectation when they quitted her (*x*). The vessel is not a derelict if she is left by her master and crew temporarily, for the purpose of procuring assistance, or with the distinct intention of returning to her (*y*), although the master may have given up the entire management to salvors (*z*). On the other hand, a deserted vessel is not the less a derelict, because those who left her for the safety of their lives, and not for the purpose of getting assistance, meant, if they could, to send a steamer to look for her (*a*); and if they intended at the time to leave her finally, a change of intention on their part, and an effort by them to regain her, are immaterial (*b*). In judging of the intention and expectation of the master and crew at the time of abandonment, the Court of Admiralty, in the absence of any direct evidence which is satisfactory, is guided by the consideration of the surrounding circumstances, such, *e.g.*, as the fact that the vessel was then near the coast and not in the open sea (*c*), or that the quitting of the ship took place without counsel or deliberation in the agony of collision (*d*). A barge found adrift in the Thames without anyone on board of her is not, in the absence of further evidence of abandonment by her owners, to be treated as a derelict (*e*). A vessel found at sea in a position of danger and without any one of her crew on board of her is *prima facie* a derelict (*f*). But she ought not to be considered a derelict, if it is shown that she had been captured by the enemy and afterwards deserted by the captor; for in such a case there is no *animus derelinquendi* imputable to the owner (*g*).

(*x*) See per Dr. Lushington, *The Sarah Bell*, 4 Not. of Cas. 144, at p. 146.

(*y*) *The Aquila*, 1 C. Rob. 37, at p. 40; *The Lepanto*, (1892) P. 122.

(*z*) *Cossman v. West*, *ubi sup.*; *The Lepanto*, *ubi sup.*

(*a*) *The Coromandel*, Swab. 205.

(*b*) *The Sarah Bell*, *ubi sup.*

(*c*) See per Dr. Lushington, *The Barefoot*, 14 Jur. 841, at p. 842; *The Florence*, 16 Jur. 572.

(*d*) *The Cosmopolitan* (Irish), 6 Not. of Cas. Suppl. xvii; *The Fenix*, Swab. 13, at p. 15; *The Pickwick*, 10 Jur. 669, at p. 670.

(*e*) *The Zeta*, L. R. 4 A. & E. 460.

In *The Upnor* (2 Hagg. 3), Lord Stowell rejected a claim for salvage which was preferred by persons who had found a barge, without persons on board, and with no anchor out, aground on a sandbank in the Medway. The owners satisfied the Court that the two hands had only left the barge to procure assistance, and that it was a common usage to leave barges on the sand.

(*f*) *The Cosmopolitan*, *ubi sup.*

(*g*) *The John and Jane*, 4 C. Rob. 216; *The Cosmopolitan*, *ubi sup.*, at pp. xxix—xxxi. But see *The Lord Nelson*, Edwards, 79.

By the Merchant Shipping Act, 1894, s. 544 (cited above, p. 52), salvage reward is made payable in respect of the saving of life "from any . . . vessel" (h).

Chapter III.

**LIFE  
SALVAGE.**

It was held in *The Fusilier* (i), that the corresponding expression in the Merchant Shipping Act, 1854, s. 458, "belonging to a ship or boat" applied to passengers as well as to crew. It was also held in *The Cairo* (k), that if a ship be in danger and thereupon some of the crew leave her in one of the boats, and are afterwards preserved by salvage services, the shipowner is liable for the payment of salvage reward to the salvors of them although they left the ship without orders. In that case the steamship *Cairo* suffered serious damage by a collision at sea, and her master ordered her boats to be got out. Some of her crew, without waiting for orders, manned one of the boats after it had been got out, and rowed away in it. They were afterwards picked up and rescued from a position of danger by a smack. In a salvage suit instituted on behalf of the owners and crew of the smack against the steamship, it was held by Sir Robert Phillimore that the plaintiffs were entitled to recover, and he awarded them 140%. But, in the course of his judgment, the learned judge intimated that he should not have awarded salvage if the seamen had left the ship contrary to orders, except for some good and sufficient reason.

"I should be sorry, by any words of mine, to countenance the idea that the section of the Merchant Shipping Act, 1854, to which I have referred (s. 458), would be so strained as to compel the Court to hold a ship liable for salvage because some of her crew had deserted her without reason and contrary to orders, and had afterwards found themselves in a condition of danger from which they had been rescued" (l).

By the Merchant Shipping Act, 1894, s. 544 (1) (m), salvage reward is made payable for the preservation of life from a foreign vessel where the salvage service is rendered wholly or in part within British waters. The provisions of the Admiralty Court Act, 1861, s. 9, which for the first time made salvage

The saving of life from any foreign vessel where the services have been rendered wholly or in part within British waters.

(h) For definition of vessel, see above, p. 55.

(i) *Ib.* at p. 186.

(j) Br. & L. 341.

(k) L. R. A. & E. 184.

(m) Consolidating M. S. Act, 1854, ss. 458, 459, and the Admiralty Court Act, 1861, s. 9.

Chapter III. reward recoverable for such services, came under judicial consideration in *The Willem III.* (n). In that case, *Willem III.*, a Dutch ship, having on board a large number of passengers, took fire about eight miles to the S. and E. of the Owers light-vessel. Some of the passengers and crew escaped in boats, and were picked up by the *Flora*, a French schooner. The schooner afterwards fell in with a British steamship, and the persons who had been picked up by the schooner were, at their own request, put on board the steamship and carried by her to Spithead, where they were safely landed. The *Flora* was not during any part of the time when the persons from the *Willem III.* were on board of her, within three miles of the shore of England or in British waters. A claim for salvage on her behalf was rejected by Sir Robert Phillimore. "No part of the services rendered by the *Flora* were rendered in British waters, and I think the circumstance that other services were afterwards performed by other persons in British waters cannot avail to bring the claim of the *Flora* within the provisions of the Act of Parliament."

The provisions of the present Act came under consideration in *The Pacific* (o). In that case the steam-trawler *Jersey* fell in with the Norwegian barque *Pacific*, flying signals of distress in the North Sea, about ninety miles north-east of the Spurn. The crew of the *Pacific* were taken on board the *Jersey*, and the state of the weather rendering any attempt to save the *Pacific* impracticable, the *Jersey* proceeded to Hull, where she landed the *Pacific's* crew. The *Pacific* was subsequently brought within the jurisdiction. In an action of life salvage, Sir Francis Jeune found, as a fact, that the services had been rendered in part within British waters, and accordingly decreed an award.

It is a question of fact in each case whether the service for which salvage reward is claimed was rendered in part within British waters. "I can imagine cases," said Sir Francis Jeune in the preceding case, "where people might be saved from a vessel, and then might be taken very considerable distances, perhaps for a long voyage, by the vessel which saved them, and then might come within British waters (p). It could not be

(n) L. R. 3 A. & E. 487.

(5th), 992.

(o) (1898) P. 170. And see *Jørgensen v. Neptune Fishing Co.*, 4 Sess. Cas.

(p) For such a case, see *Jørgensen v. Neptune Fishing Co.*, *ubi sup.*

said that that was a case of salvage services being performed in part in British waters, because it is clear that the salvage services would have finished long before the ship came within British waters at all. It is evident that one must be guided by practical considerations in each case, and what one has to look at is whether the vessel in the course of effecting the salvage service was within British waters" (q). Chapter III.

The provisions of the Merchant Shipping Act, 1894, s. 545, have not as yet been extended to any foreign country but Prussia. 57 & 58 Vict. c. 60, s. 545, only applied to Prussia.

It is necessary to bear in mind that, whilst, subject to certain exceptions already noticed, a salvor of life, although he has taken no part in the salving either of the vessel to which those whose lives he has saved belongs, or of its cargo, may proceed in the Admiralty Court for the purpose of getting a reward, his right to recover, in the absence of a special agreement (r), depends upon something—either ship, cargo, or freight—having been preserved, and that "for the saving of life alone, without the saving of ship, freight, or cargo, salvage is not recoverable in the Admiralty Court" (s); further, that the party against whom alone he can recover salvage is the party to whom property, or, at least, some interest in property (t), has been saved. If the ship is saved but the cargo is lost, it is only from the shipowner that payment for the salvage of life can be required. If, on the other hand, the ship is lost but lives and cargo are preserved, the shipowner is under no liability to contribute to the salvage reward due to the salvors of life, and the burden of it must be borne wholly by the owners of the cargo. In the case of *The Cargo ex Sarpedon* (u), the facts were briefly as follows:—The Spanish steamer *Calderon*, on the high seas, fell in with the British steamer *Sarpedon* in a state of great distress. The passengers on board No claim for salvage of life unless there is property saved against which the claim can be enforced.

(q) (1898) P. 170, at p. 175.

(r) Per Sir R. Phillimore, 3 P. D. 28, at p. 34.

(s) Per Brett, M. R., pronouncing the judgment of the Court of Appeal, *The Rempor*, 8 P. D. 115, at p. 117.

See also per Sir J. Hannen, *The Annie*, 12 P. D. 50, at p. 51.

(t) See per Sir J. Hannen, *Five Steel Barges*, 15 P. D. 142, at p. 146; per Lord Alverstone, L. C. J., *The Cargo ex Port Victor*, (1901) P. 243, at p. 256.

(u) 3 P. D. 28.

Chapter III. the *Sarpedon*, and the specie which formed a part of her cargo, were thereupon at once taken on board the *Calderon*, and the *Calderon* tried to tow the *Sarpedon* into safety, but without success, and ultimately the master and crew of the *Sarpedon* also were taken on board the *Calderon*; the *Sarpedon* was abandoned, and her master, crew, and passengers were brought, with the specie, on board the *Calderon*, safely into an English port. The specie was then arrested, in an action of salvage instituted by the owners, master, and crew of the *Calderon*, who claimed in the action to recover for life salvage, and also for salvage services to the *Sarpedon* and the specie itself. The Court, without attempting to establish a distinction between saving the specie and the lives, and the services ineffectually rendered to the ship, awarded to the plaintiffs 4,000*l.* as salvage remuneration. The owners of the specie then moved the Court to determine how much of the sum awarded for salvage, and subsequently paid to them by the owners of the specie, was for life salvage, and how much for salvage of specie, and to declare that the sum awarded for life salvage ought to have been paid to the plaintiffs by the owners of the *Sarpedon*; and further, to order the owners of the *Sarpedon* to recoup to the owners of the specie the sum paid by them in respect of life salvage and costs to the plaintiffs in the salvage suit. The Court (Sir Robert Phillimore) refused the motion, on the ground that, as no property belonging to the owners of the *Sarpedon* had been preserved to them, they could not be held personally liable to pay any portion of the sum awarded for salvage.

Extent of reward limited to value of property preserved.

Again, the extent of the liability of the owner of the salvaged property to pay life salvage is limited to the value of the property as salvaged. "I am of opinion that the liability to pay a reasonable amount of salvage to life salvors is imposed upon owners of cargo as well as upon owners of ships, and that such liability is not a general personal liability to be enforced in any circumstances, whether the ship and cargo are lost or not, but is a liability limited to the value of the property saved from destruction" (x).

(x) Per Baggallay, L. J., *Cargo ex Schiller*, 2 P. D. 145, at p. 157.

Provided, however, that either ship or cargo in fact, either wholly or in part, escapes destruction, that which so escapes is liable to the claims of the salvors of life, although its preservation has not itself been due to any salvage service. This was decided by the Court of Appeal in *The Cargo ex Schiller (y)*. In that case a German steamer with specie on board was wrecked in British waters, and the lives of the passengers and of some of the crew were saved by boats from the shore. Afterwards, by means of divers whom they employed, the owners of the specie recovered a large portion of it. An action of salvage, in respect of the saving of life, was instituted by the owners, masters, and crews of the boats against the owners of the specie. Held by James and Baggallay, L. JJ. (diss. Brett, L. J.), that the plaintiffs were entitled to be paid salvage remuneration out of the specie. In delivering his judgment (z), James, L. J., said:—

Chapter III.

The property need not have been 'salved.'

"If a ship is in distress, and the persons who go to its rescue busy themselves in the first instance, as they ought to do, exclusively with the salvage of lives, and while they are doing this, by a change of weather, a rising tide and a favourable breeze lift the ship and waft her into a safe cove, surely it is quite as reasonable and right that the ship and cargo, saved by the act of God, and without further expense, should pay the life salvors as if they had been saved by a steam-tug coming up at the critical moment, or by some other salvage services for which they would have further to pay. In this case the ship was not saved, but the cargo was saved, that is to say, it remained in a place to which the owners had access, and from which they were able to get it; and it appears to me to make no difference that the bullion has been brought to the surface by divers paid by the owner."

In the case of *The Annie (a)* (before Sir James Hannen), a curious attempt was made to recover life salvage from a ship-owner whose vessel had been sunk by collision with another and afterwards raised by local authorities, and sold by them in order to defray expenses, and who, in an action against the owner of the vessel in fault, had recovered as damages full

*The Annie.*

(y) 2 P. D. 145.

(z) *Ib.* p. 160.

(a) 12 P. D. 50.



**Chapter III.** compensation for the sunken vessel. The facts and the decision were as follows :—

The defendants' vessel having been sunk in the River Thames by a collision occasioned by the fault of another vessel, the Conservators, acting under 20 & 21 Vict. c. cxlvii, s. 86, caused it to be raised and sold, and the proceeds of the sale being insufficient to defray the expenses of raising it, they recovered, under s. 86, the amount of the deficiency from the defendants. The defendants on their part recovered the full value of their vessel from the owners of the vessel which was to blame for the collision.

In an action for salvage in respect of the preservation of the lives of the crew of the defendants' vessel at the time of the collision, it was held that the salvors could not recover; that the defendants' vessel not having been saved there was nothing to which the claim for life salvage could attach; and that it could not be preferred against the defendants in respect of the amount recovered as damages from the vessel to blame for the collision.

Payment of  
reward for life  
salvage out of  
moneys  
provided by  
Parliament.

By the Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44, s. 1 (b)), it is provided that sums paid by the Board of Trade to salvors of life under s. 544 (3) of the Merchant Shipping Act, 1894, which has already been cited, shall be paid out of moneys provided by Parliament, instead of out of the Mercantile Marine Fund.

#### **FREIGHT.**

Freight is  
also a subject  
of salvage.

Freight may  
consist of  
passage-  
money.

Besides ship, cargo, and life, freight at risk is also, in a sense, the subject of salvage, and, where it has been earned through the salvage, it contributes proportionately with ship and cargo to the payment of the salvage reward. Where the freight to be earned by the voyage consists of money payable for the carriage of passengers (*b*), and the ship is lost, but the passengers are saved and are carried in the salvaging ship to their destination, so that through the salvage service this freight is earned for the owner of the lost ship; there is, it is submitted, in the freight a valuable interest in respect of which, although no property, in the ordinary sense of the word, has been saved,

(*b*) For an instance of such freight, see, besides *The Medina*, cited in the text, *The Eastern Monarch*, Lush. 81, at p. 82.

the shipowner is liable to the salvor of the lives and the freight Chapter III.  
for the payment of reward.

The *Medina* was a steamship carrying 550 pilgrims from *The Medina*. Sumatra to Jeddah. In the course of the voyage she was wrecked on the Parkin Rock in the Red Sea. The Pilgrims gained a part of the rock which was a few feet above water, but on which, in case of bad weather, they would be exposed to imminent peril.

In answer to signals from the rock the s.s. *Timor* came up, but her master refused to rescue the pilgrims for a less sum than 4,000*l.*, and the master of the *Medina* ultimately agreed to pay him that sum for the conveyance of the pilgrims to Jeddah. The *Timor* conveyed the pilgrims to Jeddah, and the owners of the *Medina* became entitled thereby to the passage-money (amounting to 4,000*l.*), of which the freight consisted. The *Medina* herself was a total wreck. The owners of the *Timor* sued the owners of the *Medina* in an action *in personam* in the Exchequer Division of the High Court of Justice to recover the sum of 4,000*l.* under the agreement. The action was removed to the Admiralty Division, and the Judge of that Court (Sir Robert Phillimore), and, affirming his decision, the Court of Appeal (James, Baggallay, and Brett, L. JJ.) refused to uphold the agreement, because it was inequitable, but awarded the plaintiffs for salvage 1,800*l.* (c).

There was, no doubt, in this case an agreement for the payment of salvage, but the right of the plaintiffs to remuneration in the Court of Admiralty would, it is apprehended, have been equally good if no agreement had been made, seeing that the freight had been saved to the defendants, and the salvor of life is entitled to salvage according to the reasoning of the judgment of the Court of Appeal in *The Renpor* (d), if ship, cargo, or freight is saved also.

If, on the other hand, the contract of the shipowner with the passengers excludes liability to forward them on to their port of destination, the master, in transshipping them, will be deemed to be acting as agent of the passengers and not of the

(c) 1 P. D. 272; 2 P. D. 5.

(d) 8 P. D. 115.

Chapter III. shipowner, and the latter cannot be made liable for salvage remuneration (e).

**GOVERN-  
MENT SHIPS  
AND  
STORES.**

There remains for special notice the position, as regards liability to claims for salvage, of ships and stores belonging to our own or to a foreign sovereign State. No salvage action *in rem* can be prosecuted against such ships or against stores on board of them (f). The same exemption belongs, it is presumed, to all property of our own or of a foreign State on board a private ship. It is usual, however, for the Admiralty to appear and submit to the judgment of the Court in the case of claims for the salvage of stores belonging to the British Government (g). Whether a vessel hired by the government as a transport is protected from arrest in a salvage suit seems doubtful. There are instances of the arrest having been made without any objection to the jurisdiction being raised (h). Private goods which are on board the warship of a foreign government, and of which that government has for public purposes charged itself with the care and protection, have been held to share the immunity from arrest which is enjoyed by the ship itself (i).

(e) *The Mariposa*, (1896) P. 273.

(f) See *The Prince Frederick*, 2 Dods. 451; *The Constitution*, 4 P. D. 39; *Young v. SS. Scotia* (1903), 9 Asp. M. L. C. 485 (P. C.), where the vessel proceeded against was a passenger ferry boat belonging to a Colonial government. Foreign governments have sometimes requested the judge of the Admiralty Court to award as an arbitrator in cases of salvage services rendered to the property. *The Constitution*, *ubi sup.* at p. 47. The exemption is not confined to warships, but extends to all vessels and stores which are the property of a sovereign state. See *The Parlement Belge* (C. A.), 5 P. D. 197, in which the earlier cases are reviewed at length. Where government stores were being carried at the risk of charterers, and the stores were saved from a danger for which the charterers were responsible, the charterers were held liable to pay salvage: *The Cargo ex Port Victor*,

(1901) P. 243.

(g) *The Marquis of Huntly*, 3 Hagg. 246, at p. 247; Williams & Bruce, *Adm. Pr.* 3rd ed. p. 179, n. (d). In *The Cargo ex Venus*, L. R. 1 A. & E. 50, government stores were arrested, but afterwards released by consent. In *The Bertie* (1886), 6 Asp. M. L. C. 26, which was a case of salvage service rendered by a hired transport to a vessel carrying government stores, no claim in the action seems to have been put forward against any portion of the cargo. In the recent case of *The Simla*, *Shipping Gazette Weekly Summary*, November 23rd, 1906, it was stated by counsel on behalf of the Admiralty that the practice of the Government for a considerable time had been, as a matter of grace, to submit salvage claims to arbitration, reserving at the same time its rights and privileges.

(h) *The Lord Nelson*, Edwards, 79; *The Marquis of Huntly*, 3 Hagg. 246.

(i) *The Constitution*, *ubi sup.*

## CHAPTER IV.

### OF SALVORS.

(A.) *General Rules :—*

- I. *The Service must be personally performed.*
- II. *The performance of the Service must be voluntary.*

(B.) 1. *Exception to (AI.) in favour of the Owner of Salving Vessel.*

2. *Grounds of this exception.*
3. *Cases in which the Charterer as the Owner pro hao vice of the Salvage Vessel is entitled to Salvage.*
4. *Cases in which the Owner of the Salving Vessel is debarred from claiming Salvage against the Salvaged Ship.*
5. *Cases in which the Owner of the Salving Vessel is debarred from claiming Salvage against the Salvaged Cargo.*
6. *Cases in which the Crew, as well as the Owner of the Salving Vessel, are debarred from claiming Salvage.*

(C.) *As to the requirement of Voluntariness :—*

*Under what circumstances Salvage may be earned by each of the following classes :*

1. *The Crew of the Salvaged Vessel.*
2. *The Pilot.*
3. *The Tug under a Contract of Towage.*
4. *The Ship's Agent.*
5. *The Passenger.*
6. *Officers and Men of the Royal Navy.*
7. *The Coastguard.*
8. *Receivers of Wreck.*
9. *Magistrates and other Public Officials.*
10. *Life-Boat Crews.*

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THE Court of Admiralty, as a general rule, makes two requirements of those who claim to rank as salvors :—

- I. That they have been personally engaged in the service in respect of which they claim reward.
- II. That they have undertaken the service as volunteers.

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I.—AS TO  
PERSONAL  
SERVICE.

## Examples.

This rule has been, from an early date, stated and applied by judges of the Court of Admiralty. In *The Vine* (a), where salvage reward was claimed by an officer of the coastguard, who had despatched eight sailors in the revenue galley to the aid of a vessel in distress off the Needles, but who had otherwise taken no part in the salvage operations, Lord Stowell disallowed the claim. In *The Thetis* (b), Sir Christopher Robinson refused to reward as salvors those of the officers and crew of a ship of the Royal Navy who had not personally been engaged in the salvage service, and whose pretensions rested upon the fact that their ship had supplied drafts of men, stores, and a schooner and launch which had been used in the service. "Salvage in its simple character," said the learned judge, in the course of his judgment (c), "is the service which those who recover property from loss or danger at sea, render to the owners, with the responsibility of making restitution, and with a lien for their reward. It is personal in its primary character, at least; and those who are so employed in the service are those whom the law considers as standing in the first degree of relation to the property and to the proprietors. This is necessary for the protection of the owner, who ought not to be burthened with artificial claims, and it is the natural mode of tracing effects to their efficient causes; for by whom can the service be said to be ostensibly performed but by those who recover the thing; and on whom can the duty of restoring it lie but on those who actually regain the possession? These are the principles on which the Court proceeds in compelling restitution, when necessary, or in assigning a reward. It looks primarily to the actual salvor, and has uniformly rejected all claims founded on prerogative rights, as of the Lord High Admiral in former times, of lords of manors, of magistrates, and of flag officers, except with reference to assistance substantially and beneficially afforded."

In a later part, again, of the same judgment, Sir Christopher Robinson, contrasting the rule in civil salvage with the rule in prize cases, in which a commander could share in the reward if the capture took place within the limits of his station, observed "that there is no principle of constructive assistance in civil salvage" (d).

(a) 2 Hagg. 1.

(b) 3 Hagg. 14, at pp. 41, 42, 61.

(c) 3 Hagg. 14, at p. 48.

(d) At p. 58. As to the contrast

In *The Watt* (e), Dr. Lushington held that a person who merely hired labourers to assist in unloading a stranded vessel, was not entitled to rank as a salvor, but awarded him some remuneration for his work of superintendence.

In *The Charlotte* (f), the same learned judge laid down the general rule in these terms:—

“In order to entitle a person to share as salvor, he must, I conceive, have been personally engaged in the service. This principle has long prevailed as the acknowledged principle of this Court, and was recognized by Lord Stowell in delivering his judgment in *The Vine*.”

The rule, however, is not applied by the Court so as to exclude from a share of salvage reward those members of the crew of a vessel—unless it be a ship of war, or a ship otherwise employed in the public service (g)—who, under the orders of their captain, remain on board of her, after other members of the crew have been sent to the aid of the vessel to be salvaged. Those who then remain on board their own ship incur extra labour, and, perhaps, danger also, through the absence of their comrades who have been despatched upon the salvage service; and, provided that they have been willing themselves to help in the work, if ordered, it is clearly equitable that they should participate in the reward. If the service proves to be very perilous, or very laborious, they cannot justly claim an equal share with those who actually perform it, but they are always entitled to some salvage remuneration (h).

Exception in favour of those who remain on board the salving ship.

By far the most important exception, however, to the general rule of rewarding as salvors only those who were personally engaged in the service, is the exception in favour of the owners of a salving vessel.

Exception in favour of the owners of the salving vessel.

Its existence was recognised by Lord Stowell in his judgment in the case of *The Vine* (i), to which reference has been already made.

between the rules in civil and military salvage, cf. per Lord Stowell, *The Vine* (*ubi sup.*), at p. 2.

(e) 2 W. Rob. 70.

(f) 3 W. Rob. 68, at p. 72.

(g) *The Thetis*, 3 Hagg. 19, at p. 61;

*The Emma*, 3 W. Rob. 151. And see below, Ch. VII. p. 182.

(h) See as to this, below, Ch. VII. pp. 179—182, and the cases there cited.

(i) 2 Hagg. 1, at p. 2.

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"It is the general rule that a party not actually occupied in effecting a salvage service is not entitled to a salvage remuneration. The exception to this rule, that not unfrequently occurs, is in favour of owners of vessels which, in rendering assistance, have either been diverted from their proper employment or have experienced a special mischief occasioning the owners some inconvenience and loss, for which an equitable compensation may reasonably be claimed."

The right of the owner of the salving vessel to be rewarded as a salvor has received, especially in recent times, liberal recognition from the Court of Admiralty. Where the salving vessel is a steamship and is herself the chief instrument in the service, as now is commonly the case, it is the owner who gets the principal share in the reward. Even where the salvage has been performed entirely by the personal exertions of the crew of his vessel, he is usually held to be entitled to some, but, of course, to a smaller share (*k*).

Ground of this exception.

In his judgment in the case of *The Norden* (*l*), where the principal part of the salvage had been performed by a steamship, but the crews of four smacks had assisted, Dr. Lushington thus stated the reasons for which the owners of the smacks were entitled to share in the salvage reward, although the smacks were not, as vessels, instrumental in the salvage, and had been exposed to no danger:—"I entirely agree with the argument that the principal salvor is the steamer, but I disagree with the argument that the owners of the smacks had no right to sue; because I take it that if you employ the masters of the smacks and part of the crews to perform salvage services, of necessity you take into your employ the vessels which brought them, and which remain to carry them back. I admit there is a distinction, when you employ a smack in a service which is dangerous to herself, and when the probability is that she may be stove in; but as far as relates to her detention, and the right of the owner to be paid for the loss of her time, it is the same thing."

The right of the ship owner

In order that he may rank as a salvor, the facts must show that the shipowner's interests were, or were in risk of being, in some

(*k*) As to the apportionment of salvage to the owner, see below, Ch.

VII. p. 169 *seq.*

(*l*) 1 Spinks, E. & A. 185.

degree affected by the use of his property or the employment of his servants in the performance of the salvage service. In *The Two Friends* (m), the crew of the *John Blake*, which was stranded, in making for the nearest land in their boats, fell in with another vessel, the *Two Friends*, also stranded and abandoned by her crew. They boarded the *Two Friends*, and succeeded in getting her off, and in bringing her safely to England. A claim to participate in the salvage was set up by the owner of the *John Blake*, upon the ground that the actual salvors were enabled to reach the vessel saved solely by means of his boats and the use of his compass, and also upon the ground that some of the salvors were his apprentices. The sum of 300*l.* was awarded to the actual salvors, and the claim of the owner was rejected.

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depends upon his interests being affected, or being at least in risk of being affected.

In *The Charlotte* (n), salvage reward was refused to the owners of boats on the coast of Cork who had merely despatched crews in their boats to the assistance of a disabled vessel. The Court allowed them, however, a small sum of money, as equitable compensation for the use of the boats.

If the salving ship is at the time under charter, the charterer is entitled to claim salvage only if either the charter-party amounts to a demise of the ship—*locatio navis* (o)—or the charterer is entitled to salvage by the express terms of the charter-party (p). In such cases the charterer becomes, in reference to salvage, the owner *pro hac vice* (q). Under a charter-party which does not amount to a demise of the ship, and which is silent as to salvage, it is the owner who is held to be entitled to participate in salvage awarded during the currency of the charter-party for services rendered by the chartered ship and her crew, and the charterer can claim no share in it (r).

Where the charterer of the salving vessel is entitled to the owner's share of salvage.

There are some cases in which the owner of the salving ship, whether he be the absolute owner, or, as charterer under a

In certain cases the claim of the

(m) 2 W. Rob. 349.

(n) 3 W. Rob. 68.

(o) As to this, cf. *Fenton v. The City of Dublin Steam Packet Co.*, 8 A. & E. 835; *Newberry v. Colvin*, 7 Bing. 190, S. C., in H. of L., 1 Cl. & F. 283; *Schuster v. McKellar*, 7 E. & B. 701; *Omoa and Cleland Coal and Iron Co. v. Huntley*, 2 C. P. D. 464; *The Scout*, L. R. 3 A. & E. 512.

(p) See, for an example, *George Booker & Co. v. Pocklington S.S. Co., Ltd.*, (1899) 2 Q. B. 690.

(q) See per Dr. Lushington, *The Maria Jane*, 14 Jur. 857, at p. 858; *The Collier*, L. R. 1 A. & E. 83, at p. 85.

(r) *The Waterloo*, 2 Dods. 433; *The Alfien*, Swab. 189; *The Scout*, L. R. 3 A. & E. 512.



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owner or charterer to salvage may be affected by his relation to the salved property.

(a) As against the salved ship.

demise of the ship, the owner *pro hac vice*, is debarred from claiming salvage in respect of the services which his ship has rendered to the property in danger by reason of his legal relation to that property.

If the owner of the salving ship and the salved ship be one and the same person, although in some cases there may be, as will be seen hereafter, a claim for salvage by him against the cargo on board the salved ship (*s*), there can be no salvage claim on his account against the salved ship itself, for the claim in such a case would be a claim against his own property.

The same remark applies if the owner of the one ship is not the absolute owner, but the owner *pro hac vice*, of the other ship under a charter-party which amounts in law to a demise of that ship (*t*). On the other hand, as was decided by Dr. Lushington in *The Collier* (*u*), if the owner of the salving ship be only the charterer of the salved ship under an ordinary charter-party, which is not a demise and does not divest the owner of that ship of the possession and control of it, or expressly give the charterer the benefit of salvage, he is entitled to claim salvage reward against the salved ship. Nor is it any answer to a salvage claim made by A., the owner of the salving ship, against the salved ship, that B., the owner of the salved ship, was at the time of the service also the charterer of the salving ship, if the charter-party is only an ordinary charter-party (*x*); for a charter-party not amounting to a demise of the chartered ship and not containing any stipulation that the control and the benefit of salvage shall belong to the charterer, leaves the property in the chartered ship untouched and, except as to the engagements of the charter-party, as independent a property as that in any other vessel whatever (*y*). The circumstances of the salvage service in such a case may possibly give rise to claims on the part of B. against A. for delay and loss occasioned to B., as the charterer of the salving vessel, by the diversion of it from the chartered voyage to the performance of the salvage services; but this consideration does not affect the

(*s*) See *The Miranda*, L. R. 3 A. & E. 561; *The Cargo ex Laertes*, 12 P. D. 187; *The August Korff*, (1903) P. 166; below, pp. 79, 80.

(*t*) *The Maria Jane*, 14 Jur. 857.

(*u*) L. R. 1 A. & E. 83.

(*x*) See *The Waterloo*, 2 Dods. 433; *The Alfem*, Swab. 189.

(*y*) See per Lord Stowell, *The Waterloo*, 2 Dods. 433, at p. 434.

right of A., as the owner of the salving vessel, to claim for himself salvage reward for the services which that vessel has rendered to the vessel of which B. is the owner (s). Chapter IV.

Where there are several part owners of the salving ship and only some of them are interested also in the salved ship, the other part owners of the salving ship are entitled to claim salvage reward against the salved ship; and the Court may compute the amount to be paid to them, by deducting from the reward which it deems the service to deserve so much as would have gone to the share of the part owners who are also interested in the salving vessel if they could have joined in the salvage proceedings (a). The case of part owners.

The owner of the salving vessel, if he be also the owner, or the owner *pro hac vice*, of the salved vessel, may be precluded from claiming salvage against the cargo which is on board of it by reason of his legal obligations as bailee and carrier towards the owners of that cargo. Whether he is so precluded or not depends in each case upon the answer to the question—Would he, if the salvage service had not taken place, have been responsible in damages to the owners of the cargo for the loss of or injury to it, which was averted by that salvage service? Or, in other words, Did the salvage service become necessary owing to that which, if loss or damage had resulted from it, would have constituted a breach of duty or contract on the part of the bailee and carrier of the cargo? If, upon the facts of the case, the answer must be given in the affirmative, the owner of the salving vessel, who is also the bailee and carrier of the salved cargo, cannot claim salvage reward against the cargo. The ground of this disability, according to the judgment of Butt, J., in *The Glenfruin*, is the avoidance of circuity of action (b),—inasmuch as if salvage were awarded to the carrier against the cargo, the cargo owner would be entitled, either by counter-claim or cross-action, immediately to recover back the amount of such salvage from the carrier in the form of damages; but it might, perhaps, also be justified as an application of the (b) As against the cargo on board the salved ship.

(c) See per Dr. Lushington, *The also, The Glenfruin*, 10 P. D. 103. *Alfen*, Swab. 189, at p. 190.

(a) *The Caroline*, Lush. 334; cf. (b) 10 P. D. 103, at p. 109.

Chapter IV. principle that no man can earn salvage reward by services to the life or to the property which his own wrong-doing or the wrong-doing of his servants has placed in jeopardy (c).

**Example.**

A good illustration of the disability is afforded by the case of *The Glenfruin* (d). There a steamship with cargo on board was brought into distress at sea by the breaking of her crank shaft. The breakage was caused by a latent defect in the shaft, arising from a flaw in the welding. The cargo had been shipped under bills of lading which contained, amongst other excepted perils, an exception of "all and every the dangers and accidents of the seas and of navigation of whatsoever nature or kind," but which contained no protective stipulation (e) in regard to the shipowner's implied warranty of seaworthiness. The *Glenfruin* in her disabled state was towed into safety by the *Glenavon*, of which all the owners, with the exception only of one, William Houston, were also interested as owners in the *Glenfruin*. In an action of salvage against the owners of the cargo on the *Glenfruin*, Butt, J., awarded salvage to the master and crew of the *Glenavon*, and to William Houston; but refused it to the other owners of the *Glenfruin*, who were claiming against the cargo of the *Glenfruin*, holding that they, as the owners of the *Glenfruin* and carriers of the cargo, had impliedly warranted to the defendants, the owners of that cargo, that the *Glenfruin* was seaworthy at the beginning of the voyage; that this warranty had been broken; that the exceptions in the bill of lading did not protect the plaintiffs from liability for the breach; and, therefore, they were not entitled as against the defendants to any salvage, and further, were liable, on the counterclaim of the defendants, to pay the amount of the salvage awarded by the Court to William Houston and to the master and crew of the *Glenavon*.

(c) Cf. per Dr. Lushington, *The Cargo ex Capella*, L. R. 1 A. & E. 356, at p. 357; per Sir R. Phillimore, *The Glengaber*, L. R. 3 A. & E. 534, at p. 535; *The Ettrick*, 6 P. D. 127, 129; *Schloss v. Heriot*, 14 C. B. (N. S.) 59; and per Barnes, J., *The Duc D'Aumale*, (1904) P. 60, at p. 74. As to the ex-

emption of the cargo-owner in certain cases from contribution to salvage, see Ch. VIII. pp. 207—209.

(d) 10 P. D. 103.

(e) For an instance of such a stipulation, see *The Cargo ex Laertes*, 12 P. D. 187.

If, on the other hand, the circumstances are such that a negative answer can be given to the question whether the owner of the salving vessel who is claiming salvage would be responsible, as the bailee and carrier of the cargo in the salved ship, for the loss or damage which, but for the salvage service, might have befallen that cargo, then his claim to reward as a salvor against the cargo of the salved ship is a valid claim. But if it is a fault of the shipowner or his servants which has necessitated the salvage, and he only escapes responsibility for it by the special terms of the bill of lading, his claim for salvage is not one which the Court will regard with much favour when it comes to assess the quantum of reward (f).

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If the owner of the salving vessel is not, as owner of the salved ship and the bailee of the cargo on board of her, liable to the owners of that cargo for the damage which might have resulted to it if the salvage service had not been rendered, he may claim salvage against it. Examples.

*The Miranda* (g), a steamer laden with a general cargo, was disabled at sea by a breakdown of her machinery. The *Roxana*, a steamship belonging to the owners of the *Miranda*, towed the disabled steamer into safety. In the suit for salvage in respect of this service, it was proved that one of the excepted perils in the bills of lading given for the *Miranda's* cargo was "accidents from machinery," and it was not shown by the defendants, the owners of that cargo (upon whom it was held that the burden of proof lay), that the breakdown of the machinery was due to any unseaworthiness of the *Miranda* at the commencement of the voyage. Sir Robert Phillimore decided that, as the plaintiffs could not, in this state of facts, have been held liable to the owners of the *Miranda's* cargo if, instead of being salved, it had been injured or lost by reason of the accident to the machinery, they had a good claim against that cargo for the salvage services rendered by the *Roxana*.

The ss. *Laertes* was disabled at sea through the breaking of her flywheel shaft, through a flaw in the welding which existed at the commencement of the voyage but was not discoverable by the exercise of any reasonable care. There were three different bills of lading relating to the cargo shipped on board the *Laertes*, the first of which contained the clause "warranted seaworthy only so far as ordinary care can provide;" the second, "warranted seaworthy only so far as due care in the appointment or selection of agents, superintendents, pilots,

(f) See per Butt, J., *The Cargo ex Laertes*, 12 P. D. 187, at p. 191.

(g) L. R. 3 A. & E. 561. See also *The August Korff* (*Burgermeister Petersen*), (1903) P. 166.

Chapter IV. masters, officers, engineers, and crew can ensure it;" and the third, "owners not to be liable for loss, detention, or damage . . . . if arising directly or indirectly . . . . from latent defects in boilers, machinery, or any part of the vessel in which steam is used, even existing at the time of shipment, provided all reasonable means have been taken to secure efficiency." The ss. *Achilles*, belonging to the same owners, towed the *Laertes* to a place of safety. In an action of salvage against the owners of the cargo on board the *Laertes*, it was decided by Butt, J., that the owners of the cargo on board the *Laertes* would have had no ground of claim if the cargo had been lost or injured in consequence of the breakdown of the machinery, because the effect of the exceptions in the bills of lading was such as to constitute a limited warranty of seaworthiness, and this limited warranty had been complied with by the shipowner; and therefore that the cargo must be held liable to the owners as well as to the master and crew of the *Achilles* for the payment of salvage remuneration (*h*).

The inability of the owner of the salving vessel to claim salvage against the cargo on board the salved ship by reason of his relation to it, does not affect the crew of the salving ship.

And they are ordinarily entitled to claim against the salved ship, although it belongs to the owner of their own ship.

An inability on the part of the owner of the salving ship to recover salvage for himself, arising from his relation to the salved ship or to the salved cargo, does not affect the rights of the crew of his ship. They are held to be entitled to salvage reward for their services, although the owner of the ship is not. As against the cargo of the salved ship, the admission of their title is obviously just. In the case of *The Glenfruin*, which has been cited above, and in which the claims of all those owners of the salving vessel, who were also owners of the vessel which carried the cargo which was proceeded against, were rejected, it was not even argued, as Butt, J., mentions in the course of his judgment (*i*), that the master, officers, and seamen of the salving vessel were not entitled to salvage reward. Where, however, the mariners on board of the salving vessel proceeded against the salved ship, and not against the cargo only, and the salved ship belongs to their employer, the owner of the salving ship, the propriety of allowing it might not, perhaps, at first sight, appear quite so free from doubt. But the law has been clearly settled in their favour by the Privy

(*h*) *Cargo ex Laertes*, 12 P. D. 189.

(*i*) *The Glenfruin*, 10 P. D. 103, at p. 109.

Council in *The Sappho* (*k*). The grounds of their Lordships' judgment (pronounced by Mellish, L. J.) sufficiently appear from the following passage (*l*):—"It is quite clear that, as a general rule of law, seamen cannot recover salvage remuneration for services which by their contract they are bound to perform; and, therefore, they never recover salvage remuneration for services connected with the saving of their own ship, as long as the relation of master and servant between them and their owner, with reference to that ship, continues. But it has never been laid down, and their Lordships are not disposed to lay down, that if a seaman perform services for the benefit of his owner which are not within his contract, he cannot be entitled to salvage remuneration. Their Lordships do not say services which he is not bound to perform, because it may be that, as an ordinary incident of a voyage, a ship meets another ship in distress, and the master orders the seamen of his own ship to give assistance; they are, to a certain extent, bound to give assistance; but then for that assistance, if salvage services are rendered, they are entitled to receive salvage remuneration. Their Lordships do not see why the case should be different if it turn out that the ship to which the service is rendered belongs to the same owner. The ordinary contract which a seaman enters into certainly says nothing about rendering services to another ship. He does something, therefore, which is not within his contract. It may be that he ought to do it because it is an ordinary incident that he should do it; and if he does it, not because it is within his contract, but for the reason Lord Stowell assigns in the case of *The Waterloo*, where he says (*m*), 'It is the duty of all ships to give succour to others in distress, none but a freebooter would withhold it'—if he performs that duty towards a ship, though it may be belonging to the same owner, because of that moral duty, and not because it is within his original contract of service to his owner, there does not appear to be any good reason why the ordinary consequence should not follow, namely, that for this extraordinary service he should receive the remuneration which the law gives him."

The Court, however, does not favour such claims of seamen unless the extra-contractual service which they have rendered is

But such claims of seamen, unless

(*k*) L. R. 3 P. C. 690.

(*l*) L. R. 3 P. C. 694.

(*m*) 2 Dods. 437.

**Chapter IV.** of a substantial nature. Where a steamship, disabled by the breaking of her crank shaft, was towed a distance of about thirty miles without danger or risk by another steamship belonging to the same owners as the disabled vessel, and fifteen of the crew of the towing vessel instituted a salvage action in the sum of 5,000*l.* against the vessel towed, and arrested the vessel, cargo, and freight therein, the Court held their services to be salvage services, but of so slight a character that, on a value of 105,500*l.* it awarded only 15*l.* to the claimants, and ordered them to pay all the costs of the action, expressing disapprobation both of the institution of the action in the High Court, and of the arrest of the vessel for so large an amount (*n*).

Where neither owners nor crew of the salving vessel can claim salvage.

There are two cases in which both the owner and the crew of the ship which has rendered services of a salvage character to another are unable to make a good claim to reward for those services.

(a) Where the salvage has been rendered necessary by fault of the salving ship.

The first of these cases is that of the performance of services of a salvage nature which the faulty navigation of the claimants' ship has itself rendered necessary. If ship A. is so much injured through negligence or misconduct in the management of ship B. as to require salvage assistance, and that assistance is rendered by ship B., neither the owners nor the crew of ship B. are entitled to any salvage reward (*o*).

It might seem, as regards the crew of the ship B., in such a case to be more exactly just, where the negligence or misconduct which has occasioned the collision is the negligence or misconduct of some or one only of its members, to discriminate between those who are and those who are not to blame, instead of refusing salvage to all alike. Still more just would it seem to be to make a distinction in favour of both owners and mariners when their vessel saves another after a collision which has been caused by no fault of theirs, but by the fault of a pilot to whom the law has compelled them to entrust the charge

(*n*) *The Agamemnon* (1883), 5 Asp. M. L. C. 92. And see *The August Korff* (to the master and crew of the *Burgermeister Petersen*), (1903) P. 166.

(*o*) *The Cargo ex Capella*, L. R. 1 A. & E. 356; *The Glengaber*, L. R. 3 A. & E. 534; *The Altair*, (1897) P. 105;

*The Adam W. Spies*, (1901) 70 L. J. P. 26; *The Duc d'Aumale*, (1904) P. 60; *The Harvest Home*, (1904) P. 409. As to the right to reward in respect of services of a salvage nature, rendered after a collision by the innocent ship, see above, Chap. II. pp. 30, 31.

of their vessel. There is, however, no reported authority for a distinction being drawn by the Court of Admiralty in either of these cases. The Court looks, so to speak, at the conduct of the ship only, and identifies with the ship all those who are connected with it. So entirely is the regard of the Court, in reference to the right of salvage, fixed upon the ship itself, and not upon the owners or the mariners as individuals, that where a ship, which has been injured by collision through the negligent navigation of another ship, is salvaged, not by the "wrong-doing" ship, but by a different ship, which has been, as a ship, unconnected with the act of mischief, not only the crew, but even those owners of the salvaging ship who are also interested in the "wrong-doing" ship are held to be entitled to salvage reward (*p*).

In the recent case of *The Duc d'Aumale* (*q*), where a collision occurred between a tug and her tow through the joint negligence of the master of the tug and the tow, and in consequence services had to be rendered by the tug to the tow in the nature of salvage services, an attempt was made to distinguish between the master of the tug and her innocent owners and crew, and to obtain for the latter salvage reward. Barnes, J., held that the claim of the owners was barred by the negligence of their agent, the master, by whose fault the services had been rendered necessary. With regard to the claim of the crew, he said (*r*): "I think, in coming to a conclusion on the questions before me, it is necessary to consider carefully the principles upon which the Court proceeds in awarding salvage. It appears to me that the Court is guided by due regard to the general interests of ships and commerce, by which I mean that the policy of what is to be done comes into consideration, as well as the mere benefit received. It seems to me, both on principle and as a matter of good policy, it would not be desirable to encourage a crew to recover a salvage reward in such cases where their master had been one of the causes of the disaster from which the ship to which salvage services had been rendered was rescued. I am fortified in this view by *The Cargo ex Capella* (*s*),

(*p*) *The Glengaber*, 1 Asp. M. L. C. 401; less fully, L. R. 3 A. & E. 534. Whether this decision is in principle reconcilable with that of Butt, J., in *The Glenfruin* (see p. 78, above) *q*u.; and see per Barnes, J., *The Duc d'Aumale*, (1904) P. 60, at p. 73.  
 (*q*) (1904) P. 60.  
 (*r*) *Ib.* pp. 74, 75.  
 (*s*) L. R. 1 A. & E. 356.



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where Dr. Lushington said: 'In my mind the principle is this, that no man can profit by his own wrong. . . . The rule would bar any claim (by the wrongdoers) for services rendered to the other ship which was a co-delinquent in the collision.'” After commenting on the absence of any reported authority for the discrimination sought to be made, the learned judge continued: “It seems to me it would be bad policy to encourage sailors to hope and expect that their master might get the ship he was towing into danger, so that they would have to render services for which they could recover. I think that would be introducing something extremely novel into this Court, and what seems to me a dangerous kind of policy.”

(b) Where by custom or by contract the salving and the salvaged ship are bound to afford mutual protection.

The second case in which both owner and seamen are precluded from obtaining salvage reward, although their vessel has rendered salvage services, is where the salving and the salvaged vessels are at the time of the salvage service sailing as consorts under a special agreement to give mutual protection. A custom in a particular trade, or with regard to the vessels of a particular port, to give such mutual protection, may have the same effect as a special agreement. But the agreement or the custom must be proved in very definite terms and by arguments of irresistible cogency, in order to afford a defence to a clear and general right (s).

The alleged custom will not be upheld as an answer to the salvage claim, unless the facts of the case show clearly that there was a common enterprise, and that there was mutuality—that the circumstances were such that whatever service was rendered might be mutually required—*dantque capiuntque vicissim* (t).

The attempted proof of such an answer failed in the case of *The Waterloo* (u), in the year 1820, as to vessels in the employ of the East India Company, and in the case of *The Swan* (x), in the year 1839, as to vessels engaged in the Northern whaling

(s) See per Lord Stowell, *The Waterloo*, 2 Dods. 433, at p. 436, and per Sir Christopher Robinson, *The Margaret*, 2 Hagg. 48, n.

(t) Per Dr. Lushington, *The Swan*, 1 W. Rob. 68, at p. 70; cf. *The Red Rover*, 3 W. Rob. 150; *The Africa*, 1 Spks. E. & A. 299. In the last-cited

case, Dr. Lushington held that it was doubtful whether a custom applicable to the case of services rendered by one sailing ship to another could properly be extended to the case of services rendered by a steamship.

(u) 2 Dods. 433.

(x) 1 W. Rob. 68.

fisheries. The custom was proved in *The Zephyr* (y), in the year 1827, in regard to vessels in the Honduras trade; in *The Harriot* (z), in 1842, in regard to vessels engaged in the South Sea whaling trade, so far at least as the services were of an ordinary kind; and in *The Maria Jane* (a), in the year 1850, in regard to vessels sailing together in the African trade. If the proof of the custom or the special agreement fails, but the Court is satisfied that there was in the circumstances of the case some cause for a belief on the part of those on board the assisted vessel that they were entitled on either ground to the assistance for the giving of which the salvage claim is made, the Court, whilst awarding salvage to the claimant, may take this into its consideration in assessing the amount. "There may be such a connection between two ships which [*sic*], though it would not bar a claim for salvage, might affect the *quantum*" (b).

It has already been briefly pointed out in an earlier chapter (c), that voluntariness is an essential characteristic of a salvor, and therefore that the mariners, the pilot, and the agent of the ship in distress, and the owner, master, and crew of the tug, engaged to tow her, are alike unable to earn salvage by their respective exertions for her safety, or for the safety of the lives or property on board of her, unless it can be proved that, in regard to the services in respect of which they claim as salvors, they have done something which was outside the scope of their contractual duties. It was also pointed out in the same passage that similar, although not identical, considerations affect claims for salvage reward when put forward by passengers on board the saved ship, or by public servants. The special circumstances under which each of these several classes of persons may become entitled to salvage reward will now be considered in detail.

## II. VOLUNTARINESS.

Under ordinary circumstances the crew, the pilot, the agent, the passengers, and public servants, are alike unable to claim salvage.

Consideration of the circumstances under which these persons may earn salvage.

A claim on the part of the officers and crew to be permitted to assume the character of salvors in respect of services to their

## a. OFFICERS AND CREW.

(y) 2 Hagg. 43.

(z) 1 W. Rob. 439.

(a) 14 Jur. 857. See the explanation of this case by Mellish, L. J., in delivering the judgment of the Judicial Committee of the Privy Council in *The*

*Sappho*, L. R. 3 P. C. 690, at p. 693.

(b) Per Dr. Lushington, *The Collier*, L. R. 1 A. & E. 83, at p. 86. Cf. also, per Lord Stowell, *The Trelawney*, 4 C. Rob. 223, at pp. 227, 228.

(c) *Supra*, Chap. II, pp. 28—31.

Chapter IV.

own vessel, or the lives or property on board of her, is always very strictly scrutinized by the Court (*d*). To make the distress of his ship an avenue to reward beyond his wages would obviously be to tempt the seaman to negligence and to unfaithfulness in the discharge of his contractual duty. Under the provisions of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 157, a seaman is entitled to his wages notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores is to bar his claim to wages. It is the stipulated duty of the crew to protect their ship through all perils, and their entire possible service for this purpose is pledged to that extent (*e*). "It is quite clear that, as a general rule of law, seamen cannot recover salvage remuneration for services which by their contract they are bound to perform, and therefore they never recover salvage remuneration for services connected with the saving of their own ship, as long as the relation of master and servants between them and their owner, with reference to that ship, continues" (*f*).

Can earn salvage only if their contract of service is dissolved,

It follows that the dissolution of the seaman's contract of service is a condition precedent to his right to claim as a salvor. This dissolution can be effected in one of three ways:—1st, by the act of the master in discharging him; 2ndly, by the abandonment of the ship *bonâ fide*, and with the master's authority; and 3rdly, by a hostile capture of the ship.

(i) by discharge by the master;

The law as to the dissolution of the seaman's contract by the two first of these causes was laid down by Dr. Lushington in *The Warrior* (*g*). The facts and the substance of the judgment in that case were as follows:—

Example.

A ship in calm weather went by accident on a rocky beach in the Canary Islands, beat heavily, and in half an hour filled with water. The master and crew immediately quitted the ship

(*d*) See per Lord Stowell, *The Neptune*, 1 Hagg. 227, at pp. 236, 237; per Story, J., *Herbert v. Drogan*, 10 Peters (Amer.) 108, at p. 122.

(*e*) See per Lord Stowell, *The Neptune*, 1 Hagg. 227, at pp. 236, 237;

and also per Dr. Lushington, *The Florence*, 16 Jur. 572, at p. 573.

(*f*) *The Sappho*, (P. C.) L. R. 3 P. C. 690, at p. 691.

(*g*) Lush. 476.

and went on shore. The next day the master discharged all the officers and crew; and it was not proved that they were guilty of fraud in accepting their discharge. On the same day some of the crew, at the suggestion of the mate, returned to the ship, and, working for several days, succeeded in saving the ship's stores, and a considerable amount of cargo. Dr. Lushington held that there was no abandonment terminating the seamen's contract, but that the contract was terminated by the discharge given by the master; and that for their subsequent services the seamen were entitled to salvage reward. And he expressed the opinion, in the course of his judgment, that even if the master, in discharging the seamen, improperly disregarded the interests of the owners of ship or cargo, the discharge was, so far as regards the rights of the seamen, a valid discharge, unless it was found that they acted fraudulently in accepting it. Upon the general law Dr. Lushington expressed himself in these terms (h) :—

“There are two ways in which the contract of a seaman may be dissolved. It may be dissolved by final abandonment of the ship, or by the act of the master giving the seaman a discharge.”

With regard to an abandonment as entitling the crew to salvage for subsequent services in the saving of ship and cargo, the leading case is that of *The Florence* (i). The *Florence* was, by order of her master, abandoned at sea, and on the next day her crew, who had been taken to Vigo, were, by order of the British Consul, embarked on board a steamer which put to sea, and shortly afterwards fell in with the *Florence* drifting about in a derelict condition. Part of the crew volunteered to return to their ship, and were accordingly put on board of her by the steamer, and by their efforts, with the assistance of a smack and other boats, the *Florence* was safely brought to Corunna. Dr. Lushington decreed that those of the crew who so returned on board the *Florence* were entitled to be rewarded as salvors, and, in the course of a long and elaborate judgment (k), he enumerated four things as essential to the constitution of such

(ii) by the *bona fide* and legitimate abandonment of the vessel; Example.

(h) Lush. p. 482.

(k) 16 Jur. p. 573.

(i) 16 Jur. 572.

Chapter IV. an abandonment as would bring the subsequent services of the crew within the category of salvage services:—

1. The abandonment must take place at sea, and not upon the coast.
2. The abandonment must be *sine spe revertendi*.
3. The abandonment must be *bonâ fide*, and for the purpose of saving life.
4. It must be by order of the master in consequence of danger by reason of damage to the ship and the state of the elements.

In *The Le Jonet* (1), Sir Robert Phillimore, in accordance with these decisions of Dr. Lushington, held a mate of the salvaged vessel entitled to salvage. The *Le Jonet* was a barque which, on the evening of the 3rd April, 1872, was seriously damaged by collision with another vessel. The master of the *Le Jonet* and all his crew, except the mate, abandoned the *Le Jonet* and went on board the other vessel. The mate, who remained on board the *Le Jonet*, navigated her during the night, and the next morning hoisted signals of distress, which attracted a passing steamer. Some of the crew of the steamer went on board the *Le Jonet*, and the steamer towed the *Le Jonet* safely to Hull, the mate of the *Le Jonet* assisting at the helm during a portion of the towage. Sir Robert Phillimore held that as the mate voluntarily stayed on board after the *Le Jonet* had been abandoned by the master and the rest of the crew, his contract of service with the master must be considered to have been ended, and that he must be remunerated as a salvor for his subsequent exertions to save the ship (m).

Or, (iii) according to Lord Stowell, by hostile capture of the ship.

It is to be noticed that neither Dr. Lushington in his judgment in *The Warrior* nor Sir Robert Phillimore in his judgment in *The Le Jonet*, refers to the hostile capture of the ship as a cause whereby the seaman's contract may be dissolved so as to entitle him to salvage reward for services rendered to her subsequently. It is mentioned by Dr. Lushington in his judgment in *The Florence*, but with an express reservation of

(1) L. R. 3 A. & E. 556.

(m) A similar decision was given by the Supreme Court of the United

States, *Mason v. Ship Le Blaireau*, 2 Cranch, 239, 269; cf. also *Hebert v. Drogan*, 10 Peters (Amer.) 108—122.

opinion as to the soundness of the doctrine. Dr. Lushington there suggests that possibly "capture and recapture, the mariners remaining on board, either do not put an end to the contract, or revive it"; and there are dicta of Lord Alvanley, C. J., in delivering his (the dissentient) judgment in *Beale v. Thompson* (n), which seem to accord with this view of Dr. Lushington. But the doctrine that hostile capture of his ship does work a dissolution of the seaman's contract so as to entitle him to salvage reward for subsequent services to her, has been supported by the great authority of Lord Stowell.

In *The Two Friends* (o) the claim was the claim of seamen for salvage reward in respect of the recapture of their ship from French captors.

"This act," said Lord Stowell in the course of his judgment, "was no part of their general duty as seamen: they were not bound by their general duty as mariners to attempt a rescue, nor would they have been guilty of a desertion of their duty in that capacity if they had declined it. It is a meritorious act to join in such an attempt; and, if there are persons who entertain any doubts whether it ought to be so regarded, I desire not to be considered as one of the persons who entertain any such doubts. But it is an act perfectly voluntary, in which each individual is a volunteer, and is not acting as a part of the crew of the ship in the discharge of any official duty, either ordinary or extraordinary."

Lord Stowell repeated this view in his judgment in *The Governor Raffles* (p). The question in that case was, whether or not salvage reward was due to seamen for rescuing their ship from mutineers? Lord Stowell decided that it was not, upon the ground that while hostile capture did, mutiny did not, effect a dissolution of the seaman's contract of service:—

"It appears to me that it is the bounden duty of the crew to give every assistance in their power to prevent or quell a mutiny, and to use their utmost exertions to preserve or recover the possession of the vessel and goods of their employers. The case is extremely different from that of rescue from an enemy, because *there*, the moment the capture is effected, the crew are

(n) 3 B. & P. 405, at p. 430.

(o) 1 C. Rob. 273.

(p) 2 Dods. 14, at pp. 17, 18.

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discharged from their duty to their employers. The contract between the parties is at an end. The seamen no longer constitute the crew of the vessel, but become prisoners of war. Not so in the case of mutiny, for *that* does not discharge them from their duty to their owners, whose property they are bound, if possible, to recover. I do not mean to say that they are called upon to sacrifice their lives wantonly and to no purpose, but I think they are bound to use their best endeavours whenever there is a reasonable prospect of success. A service of this kind does not appear to go beyond the limits of that duty which they are bound to perform in virtue of the engagement which they have contracted with their owners."

In the earlier case of *The Beaver* (g), 1810, in which Lord Stowell awarded salvage to the master and a boy serving on board the *Beaver*, who, after their vessel had been captured by a French privateer, gallantly rose upon the prize crew, regained possession of the vessel, and afterwards, with some assistance from a British frigate, succeeded in navigating her to England, no point was raised, in opposition to the claim, as to the subsistence of the seamen's contract of service in such circumstances.

**b. THE PILOT.**

Not entitled to salvage for ordinary services, though accompanied by some risk.

The pilot who has been engaged for reward as such cannot claim salvage remuneration for ordinary pilotage services, nor are the services of a pilot to be deemed extraordinary merely because they involve some degree of hazard, or even such a degree of hazard as might entitle one who performed them purely as a volunteer to rank as a salvor in respect of them (r). The occupation of a pilot necessarily involves risk (s), and "it would be extremely dangerous," said Sir Robert Phillimore in *The Æolus* (t), "to allow the general rule that pilots cannot claim as salvors to be too easily violated: the exceptions to this rule should be few and clearly defined. It ought to be well understood that the services of a pilot are not lightly to be

(g) 3 C. Rob. 292.

(r) *The Rosehaugh*, 1 Spinks, E. & A. 267; *The Aglaia*, 13 P. D. 160. But if persons who are not pilots undertake pilotage duties, and assume the character of pilots in pilotage waters, they must be content to receive

only a pilotage fee. *The Columbus*, 2 Hagg. 128, n.; *The Æolus*, L. R. 4 A. & E. 29, 31; cf. also *The Branken Moor*, 3 Hagg. 373, 374.

(s) See *The Joseph Harvey*, 1 C. Rob. 306, at p. 307.

(t) L. R. 4 A. & E. 29, at p. 31.

converted into salvage services" (u). By the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 592, a penalty is imposed upon any qualified pilot in case of his demanding or receiving, and upon any master of a ship who offers him, any other rate in respect of pilotage services than the rate for the time being demandable by law for pilotage. Chapter IV.

It is clear, however, that, in common justice, there must be a limit to the work which the pilot can be called upon to do, and to the risk which he can be called upon to run in order to earn his pilotage fee; and it has long been well settled law that (1) there may be circumstances of such danger at the commencement of his services that they will be treated by the Court in the light of salvage, and not of mere pilotage from the first (x); and (2) circumstances of such danger may supervene after his services have commenced as to alter their character, and engraft a right to salvage reward upon services which in their inception were purely of a pilotage character (y). Still more manifest does the pilot's title to something beyond his pilotage fee become if the emergency requires him to perform services outside his pilotage district, or to do work other than pilotage, as, for example, to help in working the pumps or in paying out an anchor and cable (z). "The rates of pilotage have been settled upon the calculation of what will be an

But special circumstances at the beginning of the service or afterwards supervening may entitle pilot to salvage reward.

(u) As to the general principle governing the admission of claims to salvage by pilots, see, besides the judgment of the C. A. in *Akerblom v. Price*, which is cited below in the text, per Lord Stowell, *The Joseph Harcey*, 1 C. Rob. 306, 307, 308; per Dr. Lushington, *The Jonge Andries*, Swab. 226, at p. 229; *S. C.*, on appeal, *ib.* 303, 304, 305; per Story, J., *Herbert v. Drogan*, 10 Peters (Amer.), pp. 120, 121. Local pilotage authorities have in many cases issued by-laws affecting salvage claims by locally licensed pilots. Special legislation has been provided in a few cases: see for the Humber, 2 & 3 Will. IV. c. 105, s. 33; for the Bristol Channel, 24 & 25 Vict. c. 236, ss. 36, 37; for the Mersey, 21 & 22 Vict. c. 92, s. 163, and

44 Vict. c. 49, s. 19.

(x) See *The Jonge Andries*, *ubi sup.*; per Dr. Lushington, *The Hedwig*, 1 Spinks, E. & A. 19, at p. 23. For recent cases of this kind, see *The Admiral Aube*, Shipp. Gaz. Weekly Summary, Aug. 4th, 1899; *The Plover*, *ibid.* May 24th, 1901; *The Peri*, *ibid.* Nov. 27th, 1903; *The Candlehoe*, *ibid.* June 10th, 1905; *The Torrington*, *ibid.* Aug. 10th, 1906.

(y) See per Lord Alvanley, C. J., *Newman v. Wallers*, 3 Bos. & P. 612, at p. 616; per Sir R. Phillimore, *The Æolus*, L. R. 4 A. & E. 29, at p. 32. For a recent instance, see *The Leander*, Shipp. Gaz. Weekly Summary, February 2nd, 1906.

(z) See *The Hebe*, 2 W. Rob. 246.



Chapter IV. adequate reward for ordinary pilot services, and not for other services" (a).

*Akerblom v. Price.*

The law as to the pilot is so clearly laid down in the exhaustive judgment of the Court of Appeal (Bramwell, Brett, and Cotton, L. JJ.), delivered by Brett, L. J., in the case of *Akerblom v. Price* (b), as to render needless any detailed reference to the earlier decisions (c).

In *Akerblom v. Price* the action was brought in the Queen's Bench Division by a shipowner against an owner of cargo on board the plaintiff's ship, claiming a contribution in general average in respect of a payment which had been made by the shipowner to certain pilots; and the right of the plaintiff to succeed depended upon his ability to prove that this was a payment for salvage services, and not for services which, however meritorious, were only pilotage services. At the trial of the action the jury found a verdict for the defendant. The Divisional Court granted the plaintiff a new trial. The Court of Appeal ordered judgment to be entered for the plaintiff.

The material facts are thus stated in the judgment of the Court of Appeal :

"The facts, proved beyond controversy, were that the vessel, bound for Barrow-in-Furness, was, by the violence of wind and sea, driven to leeward of her port into Morecambe Bay; that by reason of the same violence of wind and sea the vessel could not beat to windward so as to make her port, or even remain where she was, but was being driven more and more to leeward towards dangerous sands; that her captain and crew were ignorant of the locality; that the vessel, unless guided to some part of the bay in which she might take the ground, or lie in

(a) Per Dr. Lushington, *The Elizabeth*, 8 Jur. 365. But the Court will not notice a slight act of assistance, such as taking a turn at the wheel, or giving a hand at the windlass, see *The Jonge Andries*, Swab. 226, 229; *The Monarch*, 12 P. D. 5. The towage of a damaged ship with their boat by pilots who have been employed in that capacity deserves more than a mere pilotage reward. *The General Palmer*,

2 Hagg. 176.

(b) 7 Q. B. D. 129.

(c) For earlier cases (1) in which the claim of the pilot was admitted, see *The Frederick*, 1 W. Rob. 16; *The Elizabeth*, 8 Jur. 365; *The Hebe*, 2 W. Rob. 247; (2) in which it was rejected, see *The Joseph Harvey*, 1 C. Rob. 306; *The City of Edinburgh*, 2 Hagg. 383; *The Funchal*, 3 Hagg. 386, n.; *The Johannes*, 6 Notes of Cases, 288.

comparative safety, must almost inevitably have been lost ; that the pilots, seeing her peril, put to sea from harbour in order to assist her ; that by going to sea in such a storm they ran no inconsiderable danger of losing their own vessel and their lives ; that being unable by reason of the height of the sea to board the vessel, they led her, by preceding her and signalling to her, to a safe anchorage in the bay ; that (and it is a strong indication of the opinion of all present of the urgency of the position) no mention was made from the vessel or by the pilots of any port to which the vessel should be steered. The vessel had a pilot signal flying when the pilots put off and when they approached the vessel ; and the vessel had not suffered any damage to her hull, spars, or sails.”

The judgment, after stating these facts, then proceeds to deal with the arguments of counsel which appear to have been largely taken up with the discussion of certain cases (*d*) in which Dr. Lushington had held that if the vessel upon which the pilot served was, when he boarded her, “in distress,” or afterwards (without fault on his part) became so, the pilot who brought her into safety was entitled to salvage, and not merely to pilotage reward.

“Upon these practically undisputed facts it was argued for the plaintiffs that the jury ought in reason to have found for them, on the ground that the ship was in distress, and that from that fact alone, when it exists, however great or small the distress, pilots are not bound to render any service to a ship, except upon the terms of receiving salvage reward, and that the pilots in this case had not agreed to tender services on any other terms. It was argued for the defendants that the jury were entitled, and were bound, to find for them, because the vessel was not herself damaged ; and that unless a vessel be herself damaged, pilots are bound to serve her on request as pilots, and, if they do serve her, are entitled to be paid only for pilotage service. Cases were cited from the Admiralty Reports on behalf of the plaintiffs, in order to support in its entirety the proposition enunciated for them. Those cases were criticised on behalf of the defendants in order to show that in all of them there was, in

(*d*) See *The Frederick*, 1 W. Rob. 16 ; *sic*, 10 Jur. 865, at p. 866 ; *The Jonge* *The Elizabeth*, 8 Jur. 365 ; *The Dos-Andries*, Swab. 226, at p. 229.

Chapter IV. fact, some damage to the ship itself besides its being otherwise in distress. It cannot be denied that the terms used by Dr. Lushington in *The Frederick* (e) and *The Elizabeth* (f), and several other cases, if accepted literally, support the plaintiffs' view. Equally it cannot be denied that the criticism on them made by the defendants is in fact correct."

The judgment then goes on to point out the difficulty, in dealing with Admiralty Reports, in distinguishing propositions of law from inferences which the judge desires to draw from the facts in the particular case; the necessity of dividing into its elements of law and fact the rule enunciated by Dr. Lushington before it would be applied to a trial by jury; and the "great fundamental rule" of the Court of Admiralty, viz., where the parties have made an agreement, to uphold the agreement unless it is manifestly unfair and unjust; but, if it is manifestly unfair and unjust, to disregard it, and decree what is fair and just—i.e., what the parties in the particular position in which they were placed ought to have done.

It then deals with the question of 'pilotage or salvage' in the following terms:—

"In the case, therefore, of pilots claiming salvage reward, the ultimate proposition with regard to pilots to be determined by the tribunal which has to decide between the pilot and the shipowner is, Would a fair and reasonable owner and a fair and reasonable pilot, if they had had to agree, have agreed under the circumstances that the services to be performed should be performed for ordinary pilotage fees, or even extraordinary pilotage reward, or for salvage reward? Would a fair owner have insisted on requiring the necessary services for ordinary pilotage fees, or even a higher rate of pilotage payment? Would a fair pilot have refused to perform the necessary services, unless upon the terms of a salvage reward? In such a dispute, to be determined by a judge and jury, these, besides the question of the position of the ship, are the questions to be left to the jury. In this case, for instance, the questions for the jury were, Was the ship in a position of imminent danger of being lost? Was she saved from such danger by the acts of

(e) 1 W. Rob. 16.

(f) 8 Jur. 365.

the pilots? Were the acts of the pilots, by reason of the weather and the position of the ship, made so different in danger or responsibility from the ordinary acts of service of pilots, as that no fair and reasonable owner would have insisted on requiring such service for other than salvage reward? In a dispute to be determined by a judge, in a Court of Admiralty or otherwise, these are the propositions which are to be applied to the particular facts of the case. It follows that there can be no such rigid rule of law, or of interpretation of facts, as is suggested on behalf of the defendants (*g*). It follows that the meaning of the phrase 'in distress' used by Dr. Lushington is not to be interpreted in the rigid manner suggested on behalf of the plaintiffs (*h*). Suppose a ship previously reduced by accident to such a state of unseaworthiness as makes it expedient or necessary that she should enter a port of refuge, as by a leak or the loss of a mast, but is approaching such port in moderate weather, and so that she can enter it if steered a right course: in that case, notwithstanding the damage done to her, can it be pretended that it would be reasonable and just within the lists above enunciated, that the pilot conducting her into port should be treated as a salvor? Yet she would be an unseaworthy ship, a damaged ship, a disabled ship, and, in a sense, a ship 'in distress.' Suppose, on the other hand, that ship, as a ship, to be intact, no damage to hull, spars, or sails, but driven by the most violent weather, without power of resistance, within half-a-mile of an ironbound leeward coast, with no possibility of escape from immediate total destruction but by entering into a narrow and, to the crew, unknown haven of the coast; and suppose the weather and position to be such, that with all the knowledge and skill of the best pilot, there would still be the greatest danger that he and the ship might be lost; would any fair person say that a fair master would ask a pilot to come on board and assume such a responsibility and risk, or consider that, being on board, he should exercise such a responsible duty and run such a risk as has unexpectedly arisen, for any other than salvage reward? These hypothetical cases show that it is

(*g*) *I.e.*, that the pilot is entitled to salvage for his services only when the vessel is in itself disabled or damaged.

(*h*) *I.e.*, that, if the vessel is "in distress," be the distress great or small, a pilot is entitled to salvage.

Chapter IV.

not the mere fact of injury to the hull, masts, or sails of the ship which is to govern, but that the tribunal must determine whether, under all the circumstances of the particular case, the service which the pilot has entered upon, or has unexpectedly found imposed upon him, was rendered so different in responsibility, or danger, or kind, from the ordinary service of a pilot, as to make it impossible that any fair owner should have insisted upon his being paid otherwise than by a salvage reward; or whether, although there was some increased responsibility, or danger, or unusual kind of service, any fair pilot would have refused to enter upon the service unless paid otherwise than by a fair compensation for pilotage services."

Finally, after recognising the doctrine laid down by Dr. Lushington in *The Saratoga* (i), that a pilotage service, like a towage service, may be turned by subsequent casualties into a service to be compensated by salvage reward, the judgment states the rule of law to be "that in order to entitle a pilot to salvage reward, he must not only show that the ship was in some sense in distress, but that she was in such distress as to be in danger of being lost, and such as to call upon him to run such unusual danger, or incur such unusual responsibility, or exercise such unusual skill, or perform such an unusual kind of service, as to make it unfair and unjust that he should be paid otherwise than upon the terms of salvage reward."

Salvage claim  
by pilot on  
board the  
salving vessel  
allowed.

In *The Santiago* (k), a pilot in charge of a vessel engaged in salving another vessel was held to be entitled to salvage reward from the owners of the salved vessel on the ground that he had performed services which could not be considered to be within the scope of his contract as pilot. "If a pilot," said Barnes, J. (l), "does render such services to a vessel in distress as no reasonable person, either owner or pilot, would consider ought to come within the scope of his contract, then there is no reason why he should not be paid some salvage reward, because he runs risk outside that which anybody has in contemplation. That does not show at all that in all cases where there is some risk he is to get salvage, because the circumstances

(i) Lush. p. 318. See the facts of this case below, p. 100.

(k) (1900) 9 Asp. M. L. C. 147.  
(l) *Ib.* at p. 149.

may be covered by what is in contemplation ; but the question comes to this: Does he, in any particular case, run so much risk that he ought to receive some salvage in addition to what is considered to be pilotage reward ? ” Chapter IV.

The position of the tug under a towage engagement has, in regard to the circumstances in which she may become entitled to salvage reward, a close similarity to that of the pilot. The similarity is pointed out by Dr. Lushington in a passage of his judgment in *The Saratoga* (m), which is quoted by the Court of Appeal in *Akerblom v. Price* (n). **c. THE TUG UNDER A TOWAGE CONTRACT.**  
Analogous to the case of the pilot.

The tug, under a contract of towage, is not entitled to salvage reward merely because some unexpected difficulties or delays occur in the performance of her undertaking, or because the towage is temporarily interrupted by the breaking or slipping of the towing-hawser, or because fair or moderate weather at the start changes to ordinary bad weather (o). Principles by which the right to salvage is governed.

It is “the duty of the Court to see, where a towing contract has been made, that a little departure from the exact mode in which that contract is to be performed is not magnified so as to convert towage into salvage services” (p).

But, if during the towage, without any fault on the part of the tug, by some cause which the contracting parties could not have foreseen, the tow is placed in a position of danger, and the tug stands by her, as it is the tug’s duty to do (q), and brings her into safety, either at the place of destination, or, if that is impossible, at another place, by incurring risks, or by performing duties, although without risk to herself (r), which could not reasonably be held to be within the scope of the original bargain—the towage contract, in such a case, does not bar the right to additional remuneration, but,

(m) Lush. 318, at p. 321.

(n) 7 Q. B. D. 129, at p. 135.

(o) *The Galatea*, Swab. 349.

(p) Per Barnes, J., *The Liverpool*, [1893] P. 154, at p. 164.

(q) See per Dr. Lushington, *The*

*Galatea*, Swabey, 350 ; *The Saratoga*, Lush. 318, at p. 321 ; *The Minnehaha*, (P. C.) Lush. 335, at pp. 347, 348 ; *The White Star*, L. R. 1 A. & E. 68, at p. 70.

(r) *The Pericles*, Br. & Lush. 80, at p. 81.

**Chapter IV.** to use a common expression, is superseded by the right to salvage (s).

"The real question is, What are the contracting parties reasonably supposed to have intended by the agreement, and what degree of alteration had they a right to expect? because, to suppose that the performance of the service would always be of the same character, would be absurd" (t).

It may be useful to cite here some of the principal cases which illustrate the foregoing propositions (u).

**Examples.**

In the case of the *Annapolis* (x), the tug *Storm King* was under contract to tow the ship *Annapolis* from her anchorage off Rock Ferry in the River Mersey to the Waterloo Dock. In the course of the towage the *Annapolis*, without any fault on the part of the *Storm King*, came into collision with the *Johanna Stoll*. When the collision was imminent the tug, for her own safety, but justifiably, cast off the tow-rope. The *Annapolis*, after the collision, drifted with the tide, and, becoming entangled with other vessels, got into a position of considerable danger. The tug returning made fast to her again, and brought her into safety, head to tide. She was afterwards docked by another tug, the services of the *Storm King* being required by another vessel in distress. As against the *Annapolis* (y) the Judicial Committee of the Privy Council, affirming in this respect (but

(s) *The Minnehaha*, (P. C.) Lush. 335, at pp. 347, 348. Cf. also, per Dr. Lushington, *The William Brandt, Junior*, 2 Notes of Cases, Suppl. lxvii. at p. lxviii. Where there was a contract for a specified towage service at a fixed remuneration, and during the towage, owing to damage through a collision for which neither tug nor tow was responsible, the tow was delayed for two days, Sir R. Phillimore dismissed an action of towage in which the tug owner claimed additional remuneration in respect of the delay, but expressly guarded himself from being supposed to give an opinion as to what his decision would have been if the plaintiff's case had been a case of salvage grounded on a towage service. *The Hjennmett*, 5 P. D. 227.

(t) Per Dr. Lushington, *The White Star*, L. R. 1 A. & E. 68, at p. 70; cf. also, per Sir J. Hannen, *Five Steel Barges*, 15 P. D. 142, at p. 144.

(u) For other cases on the same point, see *The William Brandt, Junior*, 2 Notes of Cases, Suppl. lxvii.; *The Pericles*, Br. & L. 80; *The White Star*, L. R. 1 A. & E. 68; *The Lady Egidia*, Lush. 513; and among more recent cases, *The Westburn* (1896), 8 Asp. M. L. C. 130; *The Stanmore* (1897), 13 Times L. R. 165; *The Emilio Galline*, (1903) P. 106; *The Aboukir* (1906), 21 Times L. R. 200.

(x) Lush. 355.

(y) There were claims for salvage against other vessels, which the Privy Council, reversing Dr. Lushington's decision, allowed.

on a different ground) the judgment of the Court of Admiralty, held that the claim of salvage on the part of the *Storm King* could not be maintained, because she had rendered to the *Annapolis* no services beyond those which she had stipulated to render by the contract of towage (s). "She was bound to tow the *Annapolis* into dock. In performing that duty she, for her own safety, let the *Annapolis* go adrift. She was justified in looking to her own safety in the first instance, but that consideration did not exonerate her from the obligation of following the *Annapolis* to complete her engagement, and from doing what she could to prevent the mischief which might arise from the temporary interruption of her service. Assuming that she could not have come up sooner, what did she do beyond what she was bound to do? She attached her hawser to the ship, and towed her out of danger, leaving the remainder of the service to be performed by another tug. She incurred no risk herself; she performed, with more or less diligence, the duty which she had undertaken; and the fact that, when the service was renewed, the *Annapolis* was entangled with another ship, will no more entitle her to salvage than if a collision had taken place without interrupting the towage service. Upon these grounds we think that the sentence, so far as it dismisses the claim against the *Annapolis*, must be confirmed."

In the case of *The Liverpool* (a) a tug was engaged for a fixed sum to tow the *Liverpool* into the River Mersey and dock her. While the tug was turning the vessel round in the Mersey, the tow-rope of another tug, which was fast on the vessel's quarter, parted, and through the effect of the wind and tide the vessel grounded. The tug towed her off in a few minutes, and she was then docked. In an action of salvage on behalf of the tug, the Court held that the *Liverpool* was not in any immediate danger, and that the tug had done "absolutely nothing more than she ought to do and would be expected to do in almost every case of a vessel passing a little too far beyond the dock entrance," and the claim accordingly was dismissed with costs.

(s) *The Annapolis*, *ubi sup.*, at pp. 373, 374.

(a) (1893) P. 154. For a similar case see *The Lady Egidia*, Lush. 513.



Chapter IV.

A tug had contracted for 15*l.* to tow the ship *Galatea* from Gravesend to the North Foreland. After the towage commenced a gale sprang up, the hawser parted, and the tug, after saving the *Galatea* from driving on the Tongue Sand, was obliged by the weather to abandon the intended towage to the North Foreland. Ultimately she towed the *Galatea* back to the Thames. Dr. Lushington held the owners, master, and crew of the tug to be entitled, under these circumstances, to salvage reward (*b*).

A steam-tug was engaged to tow a ship from the North Foreland to Gravesend, and towed her to the Prince's Channel, where both vessels anchored to stop tide. In the night a gale of wind arose and blew the ship to sea, with the loss of anchors and damage to hawsepipes, bow planking, and windlass. The tug was forced to run to Ramsgate, and the next day, the weather having moderated, she put to sea, and after considerable search discovered the ship, which had received an anchor and chain brought by a lugger from the shore. The ship was then towed by the steam-tug, another tug assisting, to the port of London. Held, that the services of both tugs were in the nature of salvage, and that the first tug was entitled to salvage remuneration for her labour and loss of employment whilst seeking the ship (*c*).

The steam-tug *Reliance* was engaged off the entrance of the Mersey for the sum of 15*l.* to co-operate with other tugs in towing the ship *Saratoga* into the river, and, as the defendants contended, into any dock as required. As the *Saratoga*, under the orders of the pilot on board of her, was being rounded to in order to enter the St. George's Basin, she was caught by the ebb tide on the starboard side and driven in towards the landing stage. The pilot hailed the *Reliance*, which was lashed to the ship's port side, and was, with the ship, in a position of danger, to hold on and go ahead full speed. This she did, and thereby succeeded in saving the ship, but was herself crushed between the ship and the stage, and received damage. Dr. Lushington held that the service thus rendered to the *Saratoga* by the *Reliance* was a salvage service, even if the towage contract was that for which the defendants contended and included docking,

(*b*) *The Galatea*, Swab. 349.

(*c*) *The Albion*, Lush. 282.

and he awarded the tug the sum of 600*l.*, inclusive of the cost of damage, repairs, and demurrage. Chapter IV.

"In the present case," he said, "there can be no doubt that by the fault of the pilot, and, I think, also the master of the *Saratoga*—for he must have perceived the danger of attempting to dock in that condition of the tide—the ship was placed in imminent peril of receiving serious damage, which the parties to the contract of towage had never contemplated, and that from this peril the ship was rescued by the *Reliance*, which was then fast to her and towing. This was a salvage service, and in performance of it the *Reliance* received damage by being forced against the stage by the ship" (*d*).

A steam-tug entered into a contract to tow a ship at sea into the port of Liverpool for 45*l.* During the performance of the service a hurricane arose, and the vessels were in most serious danger. The tug, at great peril to herself, continued to tow the ship during the hurricane, and by so doing prevented the ship drifting upon a lee shore. The wind afterwards moderated, and the tug, still continuing to tow the ship, brought her into the port of Liverpool in safety. Sir Robert Phillimore held the tug to be entitled to a liberal salvage award, saying, in the course of his judgment:—

"The counsel for the ship have contended that the principle underlying all the cases in which salvage services have been engrafted upon a towing engagement has been that the new service was of a different class, and the original service interrupted; and it is urged that in this case the service was not of a different class, but remained towage, and was not interrupted, as by the breaking of a hawser or other circumstances. But I cannot assent to this opinion. I think the true criterion by which it is to be ascertained whether the towing vessel has become a salvor is whether the supervening circumstances were such as to justify her in abandoning her contract" (*e*).

It is to be observed with regard to the last sentence of the preceding judgment, that although in the opinion of Sir Robert Phillimore (*f*), as here stated, the true way to test the title of the

Not to be  
inferred from  
preceding  
judgment  
that the tug

(*d*) *The Saratoga*, Lush. 318.

(*e*) *The I. C. Potter*, L. R. 3 A. & E. 272.

(*f*) But see per Sir J. Hannen, *Five Steel Barges*, 15 P. D. 142, at p. 144 (below, p. 104).

**Chapter IV.**  
is entitled to  
abandon her  
tow.

The tug is  
bound to  
stand by the  
tow.

tug to salvage is to see whether circumstances have supervened which would justify the tug in abandoning her contract of towage, it is by no means to be inferred—and it is clear from other parts of his judgment that he did not intend it to be inferred—that because the circumstances are such as to entitle the tug to claim salvage reward for any further services to her, that she would be justified by those circumstances in abandoning her tow. On the contrary, it is well established that it is the duty of those on board the tug—short, of course, of sacrificing their own safety—to continue to do all in their power to take the ship out of those difficulties and dangers from which, provided that their efforts are successful, springs their own title to a greater reward than that of mere towage. The law has been thus laid down in several cases (*g*), but nowhere more clearly than in the judgment of the Judicial Committee of the Privy Council in *The Minnehaha* (*h*), which is the leading case in regard to the tug's claims to salvage reward, as *Akerblom v. Price* (*i*), which has already been considered in this chapter, may be regarded as being now the leading case in reference to salvage claims on the part of the pilot.

Leading case  
of *The*  
*Minnehaha*.

In *The Minnehaha* the facts, as found by the Judicial Committee of the Privy Council, were, shortly, these:—The *Minnehaha*, being then safely anchored off the entrance to the Mersey, engaged the tug *United Kingdom* to tow her up to Liverpool for thirty guineas. Shortly after the towage commenced, there being at the time a strong gale blowing and a heavy sea, the towing hawser (which belonged to the ship) broke, and the *Minnehaha*, with two anchors down, drifted over a shoal or ridge into danger in a narrow channel called the Formby Hole. The *United Kingdom*, assisted by two other tugs, with difficulty, and by the exercise of considerable skill, rescued the *Minnehaha* from her perilous position and towed her to Liverpool. The defence to the salvage suit brought by the three tugs denied that the *Minnehaha* was in the danger which the plaintiffs alleged, and, as regards the *United Kingdom*, sought to show that misconduct and negligence on her part had caused the danger,

(*g*) *The Galatea*, *ubi sup.*; *The Saratoga*, *ubi sup.*; *The White Star*, L. R. 1 A. & E. 68, at p. 70.

(*h*) Lush. 335.

(*i*) 7 Q. B. D. 129.

if danger there was, to the *Minnehaha*, and that she had performed no service beyond her obligations under the contract of towage. On the last point Lord Kingsdown, delivering the judgment of the Privy Council, which reversed the judgment of the Court of Admiralty (*j*), stated the law in the following terms: "Where a steamboat engages to tow a vessel for a certain remuneration from one point to another, she does not warrant that she will be able to do so, and will do so under all circumstances and at all hazards; but she does engage that she will use her best endeavours for that purpose, and will bring to the task competent skill, and such a crew, tackle and equipments, as are reasonably to be expected in a vessel of her class. She may be prevented from fulfilling her contract by a *vis major*, by accidents which were not contemplated, and which may render the fulfilment of her contract impossible, and in such cases, by the general rule of law, she is relieved from her obligations. But she does not become relieved from her obligations because unforeseen difficulties occur in the completion of her task; because the performance of the task is interrupted, or cannot be completed in the mode in which it was originally intended, as by the breaking of the ship's hawser. But if in the discharge of this task, by sudden violence of wind or waves, or other accidents, the ship in tow is placed in danger, and the towing vessel incurs risks and performs duties which were not within the scope of her original engagement, she is entitled to additional remuneration for additional services if the ship be saved, and may claim as a salvor, instead of being restricted to the sum stipulated to be paid for mere towage. Whether this larger remuneration is to be considered as in addition to, or in substitution for, the price of towage, is of little consequence practically. The measure of the sum to be allowed as salvage would, of course, be increased or diminished according as the price of towage was or was not included in it. In the cases on this subject, the towage contract is generally spoken of as superseded by the right to salvage.

(*j*) There are some valuable remarks in the course of the judgment (pp. 350—353) as to the reversal of the judgments of the Court of first instance on matters of fact. See also on this point, *The Julia* (P. C.), Lush.

224, at p. 235; *The Carrier Dove* (P. C.), 2 Moore, P. C. (N. S.) 243, at p. 256; *The Alice* and *The Princess Alice*, L. R. 2 P. C. 245, at pp. 247, 248; *The Glanibanta* (C. A.), 1 P. D. 283, at p. 287.

Chapter IV.

"It is not disputed that these are the rules which are acted upon in the Court of Admiralty, and they appear to their lordships to be founded in reason and in public policy, and to be not inconsistent with legal principles. The tug is relieved from the performance of her contract by the impossibility of performing it, but if the performance of it be possible, but in the course of it the ship in her charge is exposed, by unavoidable accident, to dangers which require from the tug services of a different class, and bearing a higher rate of payment, it is held to be implied in the contract that she shall be paid such higher rate. To hold, on the one hand, that a tug, having contracted to tow, is bound, whatever happens after the contract, though not in the contemplation of the parties, and at all hazards to herself, to take the ship to her destination; or, on the other, that the moment the performance of the contract is interrupted, or its completion in the mode originally intended becomes impossible, the tug is relieved from all further duty, and at liberty to abandon the ship in her charge to her fate;—would be alike inconsistent with the public interests. The rule as it is established guards against both inconveniences, and provides at the same time for the safety of the ship and the just remuneration of the tug. The rule has been long settled; parties enter into towage contracts on the faith of it; and we should be extremely sorry that any doubt should be supposed to exist upon it. It is said that it has never been brought before us for decision. If so, considering how often the rule has been acted upon, the necessary inference is, that it has never been made the subject of appeal because it has been universally acquiesced in."

*Five Steel  
Barges.* "

In the *Five Steel Barges* (k), Sir James Hannen said: "From the examination I have given to the decisions in point, it appears to me that it is not necessary, in order to become entitled to salvage, that the supervening danger should be of such a character as actually to put an end to the towage contract. It is sufficient if the services rendered are beyond what can be reasonably supposed to have been contemplated by the parties entering into such a contract" (l).

*The Liverpool.* In the later case of *The Liverpool* (cited above, p. 99), Barnes, J., said, with reference to the contention that in all cases

(k) 15 P. D. 142.

(l) 15 P. D. 142, at p. 144.

of danger to the salved property the tug is entitled to a salvage award, that "that would only be embracing half the proposition to be found in the cases, which is, that there must be danger to the salved property, and something done either in the nature of risk run or extra services performed by the tug, beyond that which is included in the contemplation of the parties in the service which she is engaged to perform" (*m*).

In a contract of towage, in the absence of express provision to the contrary (*n*), each party is taken impliedly to undertake to use proper skill and diligence, and it is also an implied term of the contract on the part of the tug-owner that the tug shall have all reasonable equipments (*o*). If, therefore, in the performance of the towage services the tow gets into a position of danger, to extricate her from which would entitle a stranger to salvage reward, the tug is not entitled to any reward if the situation in which the tow was placed resulted wholly or to a material extent from misconduct or negligence or want of reasonable skill or reasonable equipments on the part of the tug (*p*). She cannot be permitted to profit by her own wrong or default. This was clearly laid down by the Judicial Committee of the Privy Council in the later portion (*q*) of the judgment in *The Minnehaha*, from which quotation has just been made, and the principle was enforced by Sir Robert Phillimore and the Court of Appeal (James, Baggallay, and Brett, L. JJ.), in *The Robert Dixon* (*r*), and more recently by

The tug is not entitled to salvage where the danger to the tow is caused by the fault of the tug.

(*m*) (1893) P. 154, at p. 160. And see *The Stanmore* (1897), 13 Times L. R. 165, at p. 166.

(*n*) For an instance of a towage contract in which the tug-owner contracted himself out of responsibility for the fault of his servants, see *The United Service*, 8 P. D. 56; (C. A.) 9 P. D. 3. In *The Duc d'Aumale*, (1904) P. 60, provisions in a contract of towage exempting the owners of the tug from responsibility for damage by collision caused by the negligence of their servants, and stipulating that the tug was to be deemed the servant of the tow, were held not to remove the disability of the tug to claim salvage for services to the tow rendered

necessary by a collision which had been caused in part by the negligence of the master of the tug. The responsibility of the tug is not taken away by the tow having a licensed pilot on board. *The Duke of Manchester*, 2 W. Rob. 470, 479, 480, 482.

(*o*) *The Julia*, Lush. 224, at p. 231; *The Minnehaha*, Lush. 335, at p. 348; *The Undaunted*, 54 L. T. (N. S.) 542. Cf. also *The United Service*, *ubi sup.*

(*p*) This applies as well where the tow has been guilty of contributory negligence. *The Altair*, (1897) P. 105; *The Adam W. Spies* (1901), 70 L. J. P. 25; *The Duc d'Aumale*, (1904) P. 60.

(*q*) Lush. 335, at p. 348.

(*r*) 4 P. D. 121; (C. A.) 5 P. D. 54.

**Chapter IV.** Barnes, J., in *The Altair* (s) and *The Duc d'Aumale* (t), and by Sir Francis Jeune in *The Adam W. Spies* (u) and *The Harvest Home* (v). Not only is the tug in such a case not entitled to salvage, but she will be held liable, as she was in *The Robert Dixon* (x), for any damage to the ship caused by her wrongful act or default; unless, indeed, the tow has been guilty of contributory negligence, in which case the tug will not be liable for loss sustained by the tow (y).

Cases where there is a contract of towage, but the service is treated as salvage *ab initio*.

In all the cases which have been so far under consideration in regard to claims of salvage reward on the part of a tug under a towage contract, there has been no doubt as to the original engagement being one for towage simply, and the only question has been whether or not, at some point after the towage has begun, it has been superseded by the right to salvage owing to altered circumstances.

But there may be cases in which the service of the tug has been commenced under a contract for towage at a towage rate, and no alteration has taken place in the circumstances, and the Court, nevertheless, would disregard the towage contract and reward the services of the tug as a salvage service *ab initio*. The Court would so act, in accordance with the "fundamental rule" laid down by the Court of Appeal in *Akerblom v. Price* (z), if it found that those who represented the ship in making the towage contract did not disclose to the other party material facts affecting the danger of the ship, or the danger or the difficulty of the required service, in view of which it would be (in the language of the same judgment) "manifestly unreasonable and unjust" to expect the performance of the service to be undertaken for remuneration at a mere towage rate. *The Kingalock* (a), although not in its inception a case of pure towage, serves sufficiently to illustrate the principle upon which the original agreement would be disregarded in such a case as this. There the master of a brig which had entered the mouth of the Thames on her voyage from Newfoundland to London, and

(s) (1897) P. 105.

(t) (1904) P. 60.

(u) (1901), 70 L. J. P. 25.

(v) (1904) P. 409. In that case the tug, though refused salvage reward, was allowed towage remuneration.

(x) See also *The Julia*, Lush. 244; *Spaight v. Tedcastle*, 6 App. Cas. 217;

*The Undaunted*, 54 L. T. (N. S.) 542.

(y) *Smith v. St. Lawrence Tow Boat Co.*, L. R. 5 P. C. 308; *The Altair*, (1897) P. 105; *The Adam W. Spies* (1901), 70 L. J. P. 25.

(z) 7 Q. B. D. 129, at p. 132.

(a) 1 Spinks, E. & A. 261.

was in a damaged state, owing to tempestuous weather which she had encountered, contracted with the master of a steam tug, to whom he did not disclose the damaged condition of the brig, to tow her into port for 40*l.*, and the master of the tug afterwards during the voyage discovered the true state of facts and repudiated the agreement, and after the service had been performed brought a suit for salvage; Dr. Lushington held that the damage so concealed was a fact material to the risk and difficulty of the service, set aside the agreement, and awarded the tug 160*l.* as salvage. In the later case of *The Canora* (b), the defendant's tender of the sum fixed by an agreement for towage from the Little Orme's Head to the Mersey, which it was sought on behalf of the tug to invalidate on the ground that it was made without the knowledge of the fact that a great part of the crew of the *Canora* were ill at the time, was upheld; Dr. Lushington deciding that the fact was, under the circumstances, not a material one, and that there was no danger to the tow such as to give rise to a salvage claim. But, at the same time, the learned judge expressly recognised the principle upon which he had decided in the plaintiff's favour in *The Kingalock*. "If, though unintentionally, there was a concealment of a fact so material that it ought to invalidate the agreement, I should not enforce it" (c).

In conclusion, with regard to salvage claims by a tug, the services of which began under a contract of towage, it is to be observed that the rule of the Court of Admiralty is to admit a superadded claim for salvage only upon the strictest proof of circumstances which justify such a claim. "When it is remembered how much in all cases—how entirely in many cases—a ship in tow is at the mercy of the tug; how easily, with the knowledge which the crews of such boats usually have of the waters on which they ply, they may place a ship in their charge in great, real or apparent, peril; how difficult of detection such a crime must be, and how strong the temptation to commit it, their lordships are of opinion that such cases require to be watched with the closest attention, and not without some degree of jealousy" (d).

The Court of Admiralty is slow to admit super-added claims of salvage where the service of the tug is clearly towage in its inception.

(b) L. R. 1 A. & E. 54.

(c) *Ibid.* at p. 56.

(d) Judgment of the Privy Council, *The Minnehaha*, Lush. 335, at p. 348.



## Chapter IV.

d. THE  
SHIP'S  
AGENT.

The cases not clear as to circumstances under which he can claim as a salvor.

Examples of refusal of salvage.

Examples of salvage allowed.

It appears to be impossible to draw from the decided cases any clear or satisfactory conclusion as to the circumstances under which a person who has accepted the position of ship's agent, and then renders services in saving the ship or cargo, can claim to rank as a salvor in respect of them. This only seems plain, that the Court, from motives of public policy, will lean rather to the admission than to the rejection of the salvage claim. In *The Watt (e)*, Dr. Lushington refused to recognise the claim of the ship's agent to rank as a salvor, but he allowed him an indemnity for expenses incurred, and a small sum by way of remuneration for personal superintendence. In *The Lively (f)* the same learned judge dismissed a similar claim altogether. And in the recent case of *The Crusader (g)*, Sir Gorell Barnes rejected a salvage claim by ship's agents on the ground that they had not performed any service which entitled them to claim as salvors. The only service of the claimants in that case appears to have been the making of a bargain for the employment of a tug for salvage, and for that service they had agreed to accept the usual agency fees together with repayment of their disbursements. But Lord Stowell in *The Lord Cranston (h)*, Sir Christopher Robinson in *The Happy Return (i)*, Dr. Lushington in *The Favourite (j)*, in *The Purissima Concepcion (k)*, and in *The Cargo ex Honor (l)*, favourably entertained salvage claims by ships' agents, although in none of these cases does the claimant appear to have incurred danger to life, or personal risk of any kind, or to have made any exertion beyond that which one might fairly suppose to have lain within the scope of his business as the agent for ship or cargo (m). Again, in *The Kate B. Jones (n)* salvage reward was granted to ship's agents; but there the services were "of an arduous and of a

(e) 2 W. Rob. 70.

(f) 3 W. Rob. 64.

(g) (1907) P. 22; aff. C. A. Mar. 15, 1907.

(h) Not reported, but referred to 2 Hagg. p. 207, and 3 W. Rob. p. 184.

(i) 2 Hagg. 198.

(j) 2 W. Rob. 255.

(k) 3 W. Rob. 181.

(l) L. R. 1 A. & E. 87.

(m) In the headnote in the Law

Reports to the case of *The Cargo ex Honor*, it is stated that "where ships' agents render extraordinary services in saving property, the Court will, under particular circumstances, allow a claim as agent and a claim as salvor to be united." But it is not clear, from the report, in what respect any of the personal services of the agent in that case could fairly be described as extraordinary.

(n) (1892) P. 366.

somewhat dangerous character," and it was not really contended that the claimants were not to be treated as salvors. Chapter IV.

The grounds upon which the Court of Admiralty has preferred, upon the whole, to admit this rather questionable class of claim, are clearly and fully stated in the judgment of Dr. Lushington in the case of *The Purissima Concepcion*, which has been already mentioned. The claimant of salvage in that case was Lloyd's agent at an outport. As such agent he had undertaken to relieve the ship from difficulties into which she had got, and he had, for that purpose, employed the necessary hands without himself incurring any personal risk in the services which they performed under his superintendence. Dr. Lushington, in his judgment admitting the claim, made these remarks upon the general question:—

The judgment of Dr. Lushington in *The Purissima Concepcion*.

"Divesting the question, for the moment, of all reference to the peculiar circumstances of the case immediately before the Court, let us in the first place consider how far, upon general principle, the Court has jurisdiction in a case of the following description. I will assume the case of a vessel becoming stranded in the vicinity of a port where there resides a person carrying on the business of a merchant and ship-agent, and that the master applies to such person, in his character of ship-agent, for such assistance in getting off the ship and cargo as under the circumstances may be necessary. I will further assume that such agent undertakes the task, and employs the necessary persons to perform it, he himself personally superintending the operations, but taking no active part in the duty, and not incurring the slightest risk to his own life or danger to his person.

"The question is, whether an individual claiming as salvor under such a state of circumstances, can, or cannot, maintain his action in this Court? Upon a balance of all considerations, independently of decided authorities, I am clearly of opinion that it is for the benefit of all parties concerned, and for the benefit of the mercantile interests in general, that the Court should possess the jurisdiction to entertain the suit.

"In the first place, it appears to me that both the shipowner and the owners of the cargo would be benefited by the intervention of the Court's authority in the matter, inasmuch that this Court would take cognizance of the whole of the case, and would

**Chapter IV.** take care that no improper expenses were allowed, and that nothing should be taken in the nature of ship-agency or of salvage which was not fairly earned, and to which the party claiming as salvor was not justly entitled. In the case of foreign owners, the advantage, I conceive, would be still greater, in enabling them to procure with greater facility the assistance of persons of this description, who are most useful in effecting and superintending services of this kind, and who might naturally hesitate to undertake the duty upon the mere personal credit of the master, or the foreign owner, whom he did not know. As regards the ship-agent himself, the same consideration equally applies, because, supposing him to perform the duty fairly and assiduously, he is assured of receiving a proper reward out of the property which becomes subject to the jurisdiction of the Court, and he is not left to the chance of recovering it from a foreign owner or master.

“For the reasons which I have thus stated, it is, I conceive, highly desirable that the Court should possess and entertain the jurisdiction in question; at the same time, I confess I should have felt some hesitation in exercising this jurisdiction upon mere theoretical reasoning alone, if I had not been supported by previous decisions of the Court” (*o*).

If the agent is entitled to remuneration or indemnity against expenses independently of success, the award will be smaller than it would otherwise be.

Where the owners of the salvaged property have become liable to indemnify the agent against expenses incurred by him, or to pay to him some remuneration for his services, independently of the success of the salvage operations, the Court, in awarding salvage, will take that fact into account, and it will not make so large an award to him as it would to the ordinary salvor who incurs the risk of receiving nothing at all if his services prove unsuccessful (*p*).

**e. PASSENGERS.**

The passenger has, it is true, no engagement of service, but he is to a certain extent bound up with the ship by the contract of carriage (*q*), and is obliged alike by moral duty, and by the necessity of self-preservation, if a common danger arises, to work

(*o*) So far as appears from the Report, Dr. Lushington's attention was not directed to his decision in *The Lively* (*ubi supra*), which is reported in the same volume of Reports, and

was given only fourteen months before.

(*p*) *The Kate B. Jones*, (1892) P. 366. And see below, Chap. VI. p. 163.

(*q*) See per Dr. Lushington, *The Frede*, Lush. p. 325.

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for the safety of the ship, whilst he remains on board of her. For exertions in which he joins the crew for that end, such, *e.g.*, as pumping, he is not entitled to salvage reward. Claims to salvage on the part of passengers for services of this description were rejected by Lord Stowell in *The Branston* (r), and by Dr. Lushington in *The Vrede* (s). The claimant in the first of these cases was a lieutenant in the Royal Navy, a passenger. In giving judgment, Lord Stowell said: "Where there is a common danger it is the duty of every one on board the vessel to give all the assistance he can; and more particularly is this the duty of one whose ordinary pursuits enable him to render more effectual service. No case has been cited in which such a claim by a passenger has been established; though a passenger is not bound, like a mariner, to remain on board, but may take the first opportunity of escaping from the ship and saving his own life. I reject the claim." Examples.

In *The Vrede*, the claimants were a number of emigrants who had helped in pumping the *Vrede* after she had been damaged by a collision. Dr. Lushington followed the decision of Lord Stowell in *The Branston*. But, at the same time, he expressly stated, in the course of his judgment, that in certain circumstances passengers undoubtedly may become entitled to rank as salvors (t). If, when means of escape for himself and his property are offered him, he chooses to remain in peril on board his ship for the purpose of saving her; or if he performs some extraordinary service, as in *Newman v. Walters* (u), where a passenger was requested to take command of the ship, which was on the rocks, after the master and part of the crew had abandoned her, and the pilot had become incapable through drunkenness, and he navigated her safely into harbour; the passenger in such cases will be entitled to rank as a salvor.

In some circumstances the passenger may earn salvage.

In a case heard in the United States District Court of Admiralty in the year 1864, where the facts were that the paddle-wheels and steering gear of a steamship, of great size and value, had been disabled by a gale, and she was lying helpless in the trough of the sea, and a passenger ingeniously devised and after twenty-four hours' labour carried out a plan for steering the vessel, whereby she was rendered manageable and ultimately

(r) 2 Hagg. 3, n.

(s) Lush. 322.

(t) Lush. p. 325.

(u) 3 Bos. & P. 612.

Chapter IV. brought safely into port, the Court awarded the passenger 3,000*l.* for salvage (*x*).

#### f. PUBLIC SERVANTS.

Officers and men of the Royal Navy.

Are under an obligation to render some service.

From some of the language of the judgments in *The Exell Grove* (*y*) and *The Rapid* (*z*), it might, perhaps, be thought that the salvage services of the Royal Navy should be remunerated on a somewhat lower scale than those of private salvors. Later cases show that any such notion in regard to either officers or men would be incorrect (*a*); and in these cases Sir John Nicholl probably intended only to allude to the point, mentioned also more than once by Dr. Lushington (*b*), that these salvors do not risk their own property, and therefore that element of claim is not present. The 13 Anne, c. 21 (1713), which was the first statute prescribing the payment of "reasonable reward" to salvors, and which laid a duty on the commanders and officers both of men-of-war and merchant ships to give salvage assistance to vessels in distress, made no distinction between the two classes as regards either the duty or the reward.

But, at the same time, the position of officers and men of the Royal Navy undoubtedly does require from them, as servants of the State, the performance of certain active services of protection to British ships and to the lives and cargoes on board of them, although it is impossible exactly to define the extent of the obligation (*c*); and they cannot claim salvage reward for doing anything which fairly falls within the scope of this public duty. The quelling of a mutiny on board a merchant ship is so far within it, that salvage will not ordinarily be awarded for such a service (*d*). "I do not mean to say that the King's

(*x*) *Towle v. The Great Eastern*, 2 Asp. M. L. C. 148.

(*y*) 3 Hagg. 209, at p. 228.

(*z*) 3 Hagg. 419, at p. 421.

(*a*) See *The Wilsons*, 1 W. Rob. 172; *The Iodine*, 3 Notes of Cases, 140, at p. 141. Officers and men of the Bombay Marine are entitled to the same salvage as the officers and crews of merchant vessels, *The Dalhousie* (*The Cargo ex Azalea*), cited by James, L. J., in *The Cargo ex Woosung*, 1 P. D. p. 268, and reported in the note to that case. For the position of vessels in the Indian Marine Service, see the

Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38).

(*b*) *The Iodine*, 3 Notes of Cases, 140, at p. 141; *The Earl of Eglinton*, Swab. 7, at p. 8.

(*c*) "It is, I apprehend, notorious that it forms part of the instructions of every one of her Majesty's vessels that they shall render assistance to British vessels in distress." Dr. Lushington, *The Charlotte Wylie*, 2 W. Rob. 495, at p. 497.

(*d*) *The Francis and Eliza*, 2 Dods. 117.

officers would universally, and in all cases, be excluded from salvage for services rendered by them in rescuing vessels from other than maritime dangers; but still it is their duty to render such assistance without having any such object in view; and unless they incur great personal danger, and use very great exertions in the performance of the service, I must hold that they are not entitled to a pecuniary reward" (e). Where the peril from which a ship is delivered by officers and men of the Royal Navy is not such as that of a mutiny, or of piracy, or hostile seizure, but is strictly a peril of the seas, or, as Lord Stowell called it in the passage just cited, a "maritime danger," the service seems scarcely to fall within the scope of their public duty. But even in this case the Court of Admiralty has repeatedly (f) expressed the opinion that no claim for salvage ought to be put forward on their behalf, unless the service has been one of an important character; and in accordance with this judicial opinion, the Board of Admiralty, by Order of the 30th January, 1852, directed the officers of her Majesty's ships not to claim reward for salvage services rendered to vessels in distress unless the service was one of real importance, or was accompanied with hazard. And two years later, in order to prevent claims for salvage in respect of any but important services, the Legislature provided, by sect. 485 of the Merchant Shipping Act, 1854, for which the Merchant Shipping Act, 1894, sect. 557, is now substituted, that the written consent of the Admiralty should be a condition precedent to the final adjudication upon claims on account of any salvage services rendered to any ship or cargo, or any appurtenances of any ship, by the commander or crew, or part of the crew, of any of her Majesty's ships. 57 & 58 Vict. c. 60, s. 557.

The law as to the character of the salvage service for which officers and men of the Royal Navy are entitled to claim reward is well exemplified by the case of *The Cargo ex Ulysses* (g), *The Cargo ex Ulysses.*

(e) Per Lord Stowell, *The Francis and Eliza*, *ubi sup.* at p. 120.

(f) See *The Clifton*, 3 Hagg. 117, at pp. 121, 122; *The Rapid*, *ibid.* 419, at p. 421; *The Iodine*, 3 Notes of Cases, 140, at p. 141. The importance of the service as justifying a salvage claim by a king's ship, is dwelt upon in the R.

judgment of Lord Stowell in *The Louisa*, 1 Dods. 317, at pp. 318, 319.

(g) 60 L. T. (N. S.) 111. The case is also reported, but less fully, in 13 P. D. 205. See also *The Rosalie*, 1 Spinks, E. & A. 188; *The Alma*, Lush. 378.

Chapter IV. in which one set of plaintiffs consisted of the commander, officers, and crew of H.M.S. *Falcon*. The ss. *Ulysses*, laden with a valuable cargo of quicksilver and general merchandize, stranded on a coral reef in the Red Sea on the 17th August, 1888. The ship could not be got off, and it was determined to jettison part of the cargo in shallow water. During the operations a number of armed Arabs came upon the scene, and began plundering the jettisoned cargo. On the 19th H.M.S. *Falcon* came to the place, and lent some of her crew to assist in getting the cargo out of the ship's hold and in hauling it over the coral reef in order to put it on the boats in which it was to be removed. Part also of the *Falcon's* crew were landed to guard the jettisoned cargo and prevent the Arabs from looting it, and to provide sentries to watch it by night and day. These services lasted until the 6th September. Sir James Hannen awarded to these plaintiffs 1,000*l*. Speaking of their services in the course of his judgment, he said:—"There can be no doubt that the services rendered by the *Falcon* were of a very valuable kind. There was not merely the protection afforded by the presence of one of her Majesty's ships, but also by the posting of sentinels on shore to prevent the Arabs taking possession of the cargo. In addition to that, the crew of the *Falcon* were engaged on board the *Ulysses* in getting the goods out of the hold, which was full of water which had been fouled to an extraordinary extent. The foulness of the water was not only a source of great annoyance to those engaged in getting out the cargo, but possibly, a source of danger; and, as the cargo got lower, the men had to stand up to their armpits in the water, and occasionally put their heads under it. Then again, as the cargo was jettisoned in shallow water, there was the labour of getting it from the water to the shore, and then of transporting it about one-third of a mile to the place where it was put into the lighters—very troublesome work when one bears in mind the heat of that season of the year in the Red Sea. . . . Now arises the question, in what way are the services of the captain and the crew to be compensated? It appears to me that there is a certain amount of protection which is so clearly within the duty of one of her Majesty's ships, that it would not give any claim for salvage services. I do not think the Admiralty has sanctioned a claim which is based simply

upon the protection offered by the presence of one of her Majesty's ships against piracy or land robbers. The case is altered when the officers and crew are called upon to do something which is not within the ordinary scope of their duties. This remark applies to the posting of sentinels on the island for the purpose of protecting the cargo, exposed as it was to very great risk. But that alone would not, in my judgment, give rise to a high standard of service. It would be but a reward rather in the spirit in which a generous master gives a gratuity to servants who have been called upon to do something a little outside the scope of their ordinary function.

"But the getting out of the cargo, and the rescuing of it from the shallow water into which it was first thrown, appears to me to lie entirely outside the scope of her Majesty's ships, and to entitle those engaged to a substantial reward."

It has already been mentioned in an early part of this chapter (*h*) in connection with the general principles of the law of salvage, viz., that in 'civil' as distinguished from 'military' salvage, the Court of Admiralty recognises no claim formerly constructive assistance. So, if some only of the crew of a Queen's ship render services in the nature of civil salvage, the rest of the crew cannot rank as salvors with them. Nor has either the captain of their ship or the admiral of the station or of the fleet to which she belongs, by virtue merely of his command, any prerogative right to share in the reward (*i*). But if either the commander of the ship or the admiral contributes, as Admiral Baker, one of the claimants, was held to have done, in *The Thetis* (*k*), any effective salvage assistance, he may claim to share in the reward. In *The Nile* (*l*), owing to a communication from the captain of a Queen's ship lying at anchor in a foreign port, a steamer, which had been char-

Merely  
constructive  
assistance is  
not recog-  
nised.

(*h*) See above, p. 72. As to the principle of reward in 'prize,' see per Dr. Lushington, *The Banda and Kirivee Booty*, L. R. 1 A. & E. 109, at pp. 135, 250.

(*i*) *The Thetis*, 3 Hagg. 14, at pp. 48, 49, 58, 61. The Proclamation now in force (September 17th, 1900) expressly directs that "no flag officer shall share in any remuneration or reward conferred or awarded to the

crew of any of our ships or vessels as salvage, unless he shall have been actually on board the ship or vessel to which the award shall be made, or have personally aided and assisted in the transaction at the time the service was rendered."

(*k*) *Ibid.* pp. 57—60.

(*l*) L. R. 4 A. & E. 449; followed by Sir J. Hannen in *The Bertie* (1886), 6 Asp. M. L. C. 26.



**Chapter IV.** tered by the Government as a transport, proceeded to the aid of a vessel in distress outside the port. In addition to her own crew the transport took with her a naval officer and some seamen from the Queen's ship. The transport could not have rendered the salvage services without the permission of the captain of the Queen's ship. Sir Robert Phillimore held that he was entitled to rank as a salvor with the master, officers, and crew of the transport, and the officer and men from the Queen's ship who took part in the salvage services.

No salvage claimable in respect of the ship itself.

It is further to be noted in regard to services rendered by the Royal Navy, that the only salvage claim that can be made is a claim in respect of the personal services of the officers and men engaged in the service (*m*). It is enacted by the Merchant Shipping Act, 1894, s. 557(1), replacing s. 484 of the Merchant Shipping Act, 1854, that in the case of salvage services being rendered by any ship belonging to her Majesty or by the commander and crew thereof, no claim shall be allowed in respect of any loss, damage, or risk, caused to the ship or her stores, tackle, or furniture, or for the use of any stores or other articles belonging to her Majesty supplied in order to effect those services, or for any other expense or loss sustained by her Majesty by reason of that service. This provision has been held to apply to the case of a ship belonging to the Bombay Marine with a hired commander and crew (*n*); but not to apply to a vessel belonging to Ramsgate Harbour, and vested in the Board of Trade under the Harbours and Passing Tolls Act (24 & 25 Vict. c. 47), 1861 (*o*).

Special provisions, the consideration of which, as they deal with procedure only, is not within the scope of this work, in regard to salvage services rendered by the Royal Navy at any place out of the United Kingdom and the four seas adjoining thereto, are contained in the Merchant Shipping Act, 1894, ss. 558—564.

(*m*) Referred to by Dr. Lushington, *The Alma*, Lush. 378, at p. 381; by Sir J. Hannen, *The Cargo ex Ulysses*, 13 P. D. 205, at p. 208.

(*n*) *The Dalhousie (The Cargo ex Azalea)*, 1 P. D. 271, n., decided under the M. S. Act, 1854, s. 484.

(*o*) *The Cybele*, 2 P. D. 224; (C. A.) 3 P. D. 8. See on this case the remarks of Lord Halsbury, L. C., delivering the judgment of the Privy Council, *Young v. SS. Scotia* (1903), 9 Asp. M. L. C. 485, at p. 488.

The officers and men of the coastguard have, besides their duties in connection with the revenue, duties also in connection with salvage and wreck, which they perform under the instructions of the Board of Trade and of the Admiralty (*p*), viz., the duty of watching and protecting shipwrecked property, and the duty of assisting the Receivers of Wreck in their various functions under the Merchant Shipping Act, 1894, in regard to wreck and marine casualties.

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g. THE  
COAST-  
GUARD.

For "watching or protecting shipwrecked property," they are entitled to payment according to a scale fixed by the Board of Trade, under the Merchant Shipping Act, 1894, s. 568. "Where services are rendered by any officers or men of the coastguard service in watching or protecting shipwrecked property, then, unless it can be shown that those services have been declined by the owner of the property or his agent at the time they were tendered, or that salvage has been claimed and awarded for those services, the owner of the property shall pay in respect of those services remuneration according to a scale to be fixed by the Board of Trade; and that remuneration shall be recoverable by the same means, and shall be paid to the same persons, and accounted for and applied in the same manner as fees received by receivers under the provisions of this part of this Act. The scale fixed by the Board of Trade shall not exceed the scale by which remuneration to officers and men of the coastguard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated" (*q*). In respect of their other statutory and official duties, they may become entitled to remuneration, with the sanction of the Board of Trade, which is ultimately paid by the owners of shipwrecked property (*r*); but they cannot sue for salvage.

Are paid for the watching or protection of shipwrecked property according to a Board of Trade scale;

and for other official and statutory duties in a similar way.

But if officers and men of the coastguard incur some risk or undertake some labour beyond the scope of their official and statutory duties, as they are encouraged to do by the Admiralty

For services of a salvage character, beyond official and statutory

(*p*) See "The Instructions in respect of Wreck and Salvage," issued by the Board of Trade to receivers of wreck and other officers, 1895; and the "Coastguard Instructions," issued by

the Admiralty in 1904.

(*q*) See sect. 567.

(*r*) See the Board of Trade Instructions, 1895, paras. 169, 253.

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duties, they are entitled to be treated as volunteer salvors.

**Examples.**

and the Board of Trade Instructions (*s*)—if, for example, they actually put out to sea, and with risk and labour save lives and property from a wrecked vessel, they are entitled to salvage in the same manner and to the same extent as other salvors (*t*), except in so far as they are required, according to the Admiralty Instructions (*u*), to obtain, for a final adjudication upon their claims, the written consent of the Admiralty under the Merchant Shipping Act, 1894, s. 557. In *The Queen Mab*, in 1835, Sir John Nicholl, while pointing out, as regards the claim of the crew of a revenue cutter, that “going on board for the protection of the revenue will not render them salvors” (*x*), awarded them a small salvage reward for putting an anchor and cable on board the damaged ship. In the later case of *The London Merchant* (*y*), the same judge gave salvage reward to an officer and five men of the coastguard for services to a vessel on the rocks off Holyhead; but his judgment (for some reason not stated in the Report) was reversed on appeal as regards the compensation to five coastguardsmen. Other instances of salvage reward to the coastguard are to be found in *The Charlotta* (*z*) and *The Silver Bullion* (*a*).

**h.**  
**RECEIVERS**  
**OF WRECK.**

Receivers of Wreck, by the express terms of the Merchant Shipping Act, 1894, s. 567, are not entitled to any remuneration beyond the payment of their proper expenses and the fees prescribed by the statute. They can claim as salvors only if they personally render salvage services to life or property in peril which are outside the prescribed duties (*b*).

**i. MAGIS-**  
**TRATES**  
**AND OTHER**  
**OFFICIALS.**

Magistrates and other persons holding a public office or appointment are entitled to salvage reward only if, and so far as, that which they do is clearly outside the scope of the duties

(*s*) See the Board of Trade Instructions, 1895, para. 10; the Admiralty Instructions, 1904, Art. 1277.

(*t*) See the Board of Trade Instructions, para. 169; the Admiralty Instructions, Art. 1278.

(*u*) Art. 1279.

(*x*) 3 Hagg. 242, at p. 243. See also *The Clifton*, 3 Hagg. 117, at p. 121.

(*y*) 3 Hagg. 394.

(*z*) 2 Hagg. 361.

(*a*) 2 Spinks, E. & A. 70. See also Pritch. Adm. Dig. 3rd ed. (1887), vol. 2, p. 1920.

(*b*) See the Board of Trade Instructions, 1895, para. 168. For the duties of the Receiver in regard to assistance to vessels in distress, see the Merchant Shipping Act, 1894, ss. 511 *et seq.*; the Board of Trade Instructions, esp. paras. 10—15.

of the office or the appointment. The judgment of Lord Stowell in *The Aquila* (c), where the salvage claim of a magistrate was rejected, deserves, as the leading case upon this subject, a full extract :—

**Chapter IV.**

Can claim salvage only if and so far as the service is outside their official duty.

The law laid down by Lord Stowell in *The Aquila*.

“ I come now to examine the pretensions of the magistrate; and I can try them only by his own affidavit, as there is no other evidence which takes any notice of them. I do not remember any case in which a magistrate, acting in discharge of his public duty, has demanded to be considered as a salvor; and therefore I do not much wonder at the diffidence which has restrained this gentleman from giving in his claim till a very late hour: this, however, is certain, that if a magistrate acting in his public duty, on such an occasion, should go beyond the limits of his official duty, in giving extraordinary assistance, he would have an undeniable right to be considered as a salvor; it will be therefore necessary to inquire what has been the extent of this gentleman's services: if they amount only to the ordinary discharge of his duty, I shall be disposed to leave him to the general reward of all good magistrates, the fair estimation of his countrymen, and the consciousness of his own right conduct.

“ Now I do not discover any peculiar vigilance or activity in his conduct on this occasion: the first finders sent to him to inform him of the situation of the vessel, and offered to put it into his possession; so far he is only passive: but he goes on to state as an eminent service, ‘ that he sent fifteen men, under the obligation of an oath, which he administered to them, to assist; and that by their exertions the ship was righted in the harbour; and 200 persons who had come down,’ as it is said, ‘ according to the custom of that coast, for plunder, were driven off.’

“ Now I must say, that if a magistrate was aware that such a barbarous custom prevailed in his neighbourhood, it might have occurred to him that his presence was requisite on such an occasion. The presence—the eye—the voice of a magistrate avail much. It does not, however, appear, either that he attended, or that he was prevented by unavoidable accidents from attending. As he did not attend, I think there was reason to fear that those fifteen men might conform to the barbarous *lex loci*, enforced as it was by a multitude of 200 persons; and that they might think

(c) 1 C. Rob. 37, at pp. 46—49.

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much more of the plunder they could take, than of the oath which they had taken. However, it does turn out, by great good luck, that these fifteen men put to flight the 200. I own I see more good fortune in the event, than prudence in the measure that was pursued: at any rate the fifteen men must be paid very liberally for their assistance.

"A second plea of merit advanced on the part of this gentleman is, that he sent notice to the *Swedish* consul, and to Lloyd's Coffee-house: so far he acted with great propriety;—perhaps more might have been done. It is fit a magistrate should know that, when a ship comes into port in the condition of this vessel, there are interests of the Crown which, on behalf of the public, it is his duty to protect. Notice should have been sent also to the officers of the Crown.

"Upon the whole, commending this magistrate for what he did, but thinking that he might perhaps have done more, I am not authorized to pronounce that he is a salvor in this case—nor entitled to any share of the salvage which I decree to be paid to the other parties."

A case in which such a claim was allowed.

Impossible to fix any precise limits of official duty.

There is one unreported case, referred to by Dr. Lushington in his judgment in *The Purissima Concepcion* (d), in which Lord Stowell decided in favour of the magistrate claiming salvage for a service which consisted in sending police officers to protect the cargo of a stranded vessel. Dr. Lushington suggests that there may be some doubt whether Lord Stowell in this case did not go too far. But in a matter of this kind there can be no general rule. All that can be said is that there is in each case a conflict between two important principles, the one that salvage is the reward only of voluntary services, the other that every effort to save life or property in peril at sea deserves favourable consideration in the interests of humanity and commerce.

"In all cases, indeed, where duty springing from office or arising out of contract would have legally bound the claimants to do services of the same nature as they actually rendered, the Court is vigilant to protect the owners from improper claims, without neglecting what is required for the ends of justice and the encouragement of enterprise on such occasions" (e).

(d) 3 W. Rob. 181, at p. 184.

(e) Maclachlan, *Treatise on the Law*

of Merchant Shipping, 4th ed. pp. 645, 646.

Lifeboatmen, nowadays, play so considerable a part in saving life and property in peril that it seems necessary to make a special reference to the circumstances under which they can become entitled to salvage remuneration (*f*). Chapter IV.  
j. LIFEBOAT CREWS.

The duty of lifeboatmen is primarily to save life; and for such service, under the Regulations of the Royal National Lifeboat Institution, they are entitled to remuneration from that Institution. If, however, on reaching a vessel in distress, they find that their services are required for the salvage of property alone, and such services are performed, their position becomes changed to that of ordinary salvors of property, and they have the ordinary remedies for recovering salvage remuneration incidental thereto. They are then treated as having borrowed the lifeboat, and are personally responsible to the Institution for any damage sustained by it in the performance of the services. But strict proof of this change of position will be required. "Lifeboatmen must understand that when they have gone out to save life, as members of a lifeboat crew, the onus is on them to prove that they have afterwards become entitled to salvage reward as against the property alleged to be in peril" (*g*).

"Lying by" a vessel in distress during any lengthened "Lying by." operations at the master's request, whether assistance is given in such operations or not, is considered a salvage service, and gives rise to a right to salvage reward. But where the lying by is of short duration, the Lifeboat Institution makes itself responsible to the lifeboatmen for remuneration, and salvage reward cannot be claimed for such service.

Lifeboatmen who merely assist in launching a lifeboat will be entitled to salvage reward if the services of the lifeboat become changed into salvage of property (*h*). But unless the change takes place, they have to look to the Institution for remuneration. Launchers.

(*f*) See the Regulations issued by the Royal National Lifeboat Institution. For recent instances of salvage of property by lifeboatmen, see *The Sardonyx*, Shipp. Gaz. Weekly Summary, Apr. 4th, 1901; *The Vondel*, *ibid.* Apr. 29th, 1901; *The Riori*, *ibid.* May 2nd, 1902; *The Auguste Legembre*, (1902) P. 123 (cited below, p. 179);

*The Cayo Bonito*, (1904) P. 310; *The Bushmills*, Shipp. Gaz. Weekly Summary, June 22nd, 1906.

(*g*) *The Marguerite Molinos*, (1903) P. 160, at p. 164. In that case the lifeboatmen failed to discharge the onus.

(*h*) *The Cayo Bonito*, (1901) P. 310.

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Valuable as salvage services rendered to property by lifeboatmen often are, the Court does not look with much favour upon claims arising out of such services where the property in peril could have been salvaged by other efficient means, or where, in order to render the services, the lifeboat has been exposed to the risk of destruction or serious injury. In a recent case (i), Bucknill, J., after expressing some disapproval of the use of lifeboats for the salvage of property alone, is reported to have said: "I say strongly that lifeboats should in the first instance be used only for saving life, because a lifeboat might be destroyed or very much injured while saving property, and consequently might not be available when wanted for saving life."

(i) *The Bushmills*, Shipp. Gaz. Weekly Summary, June 22nd, 1906.

## CHAPTER V.

## OF THE SALVAGE SERVICE.

1. *The necessary elements of a Salvage Service.*
2. *Summary of the principal kinds of Salvage Service.*
3. *Whether or not the giving of Information or Advice constitutes a Salvage Service, considered.*

SALVAGE services, as will have been already apparent from the cases cited in the preceding chapters of this treatise, may be rendered in very many different ways (*a*). Every act of effectual assistance, if it is done voluntarily, and to save that which is at the time in danger, in the sense explained above in Chapter II. (*b*), is of the nature of salvage. The amount of skill, labour, time, or loss which it may involve affects only the quantum of compensation. The same remark applies to risk in the performance of the service. "Risk to the salvors," said Dr. Lushington, in *The Pericles* (*c*), "is not a necessary element to salvage, though it does, as we all know, enhance the merit of the service, and earn a higher reward."

What is a salvage service.

Risk to the salvors is not essential.

It would serve no useful purpose to attempt to catalogue all the various kinds of salvage service which the Court of Admiralty has recognised; but the principal classes of such service may be described as follows (*d*):—

1. The towing (*e*), piloting (*f*), or navigating (*g*) into safety of a ship which is in danger or distress;

Classification of salvage services.

(*a*) For a description of a salvage service, see above, Chap. I. p. 2.

(*b*) Pp. 20—31.

(*c*) Br. & L. 80, at p. 81. Cf. also per Lord Stowell, *The Henry*, Edwards, 193, at p. 196.

(*d*) A very full list of services for which salvage has been awarded, together with a summary of the facts in each case, will be found in Pritch. Adm. Dig. 3rd ed. (1887), vol. 2, pp. 1920—2123. A case referred to in the following notes as illustrating a particular class of salvage service will

often be found on reference to the Report to illustrate other classes also.

(*e*) *The Ellora*, Lush. 550. In *The Madras*, (1898) P. 90, the services consisted in holding a vessel in the position in which she had stranded, so as to prevent her from sinking in deep water or doing damage. For other cases, see Appendix A. (below, p. 264).

(*f*) *The Anders Knape*, 4 P. D. 213.

(*g*) *Newman v. Walters*, 3 B. & P. 612; *The Le Jonet*, L. R. 3 A. & E. 556; and see cases cited below, n. (*u*).



## Chapter V.

2. The rescue by landing (*h*) or transshipment (*i*) of cargo or persons belonging to a ship so circumstanced ;
3. Getting a stranded ship afloat (*k*) ;
4. The raising of a sunken ship (*l*) or cargo (*m*) ;
5. The bringing into safety of derelict (*n*) or wreck (*o*) ;
6. The setting in motion (*p*), fetching (*q*), or bringing (*r*) of assistance to a ship in danger or distress ;
7. The saving of persons belonging to a ship who, having taken to the boats in order to escape from danger on shipboard, are afterwards picked up whilst still in danger at sea (*s*) ;
8. The protection or rescue of a ship or her cargo or the lives of persons on board of her from pirates or plunderers (*t*) ;
9. The supplying of officers or seamen to a ship which, through disease or other calamity, is dangerously short of hands to navigate or to work her (*u*) ;
10. The supplying of tackle or gear to a ship, which would be imperilled by the want of it (*x*) ;

(*h*) *The Favourite*, 2 W. Rob. 255.

(*i*) *The Columbia*, 3 Hagg. 428; *The Westminster*, 1 W. Rob. 229; *The Alma*, Lush. 378; *The Erato*, 13 P. D. 163.

(*k*) *The India*, 1 Spks. E. & A. 63; *The Erato*, 13 P. D. 163; *The Inchmaree*, (1899) P. 111; *The Cayo Bonito*, (1904) P. 310.

(*l*) *The Catherine*, 6 Notes of Cases, Suppl. xliii.

(*m*) *The Jubilee*, 3 Hagg. 43 (*a*); *The Cadiz and The Boyne*, 3 Asp. M. L. C. 332.

(*n*) *The Hope*, 4 P. D. 217; *The Janet Court*, (1897) P. 59.

(*o*) *The Samuel*, 15 Jur. 407.

(*p*) *The Marguerite Molinos*, (1903) P. 160. "The law is clear, that where a person does something, outside his duty, of such a nature as to be the cause of an act done by another, which is a salvage act, he may himself hold the position of salvor, although he has done no more than give information." Per Bucknill, J., *ibid.* at p. 164. In *The Cayo Bonito*, *ubi sup.*, launchers of a lifeboat were given salvage reward.

(*q*) *The Ocean*, 2 W. Rob. 91; *The*

*Sarah*, 3 P. D. 39.

(*r*) *The Undaunted*, Lush. 90.

(*s*) *The Cairo*, L. R. 4 A. & E. 184.

(*t*) *The Calypso*, 2 Hagg. 209; *The Lady Worsley*, 2 Spinks, 253; *The Erato*, 13 P. D. 163; *The Cargo ex Ulysses*, 13 P. D. 205; and cf. per Lord Stowell, *The Francis and Eliza*, 2 Dods. 115, at p. 118. The saving of a ship from mutineers would certainly also rank as a salvage service. It formed part of the service in three cases cited in Pritch. Adm. Dig. 3rd ed. (1887), vol. 2, pp. 1967, 1971, 2049, from Mitchell's Mercantile Register. In *The Governor Raffles*, 2 Dods. 14 (*supra*, p. 89), the claimants failed because they formed part of the crew, and therefore in quelling the mutiny they could not be considered volunteers.

(*u*) *The Golondrina*, L. R. 1 A. & E. 334; *The Skibladner*, 3 P. D. 24; *The Olga*, Shipp. Gaz. Weekly Summary, Nov. 25th, 1898; *The Planet*, *ibid.* Jan. 31st, 1902; *The Vega*, *ibid.* Feb. 18th, 1904.

(*x*) *The Prince of Wales*, 6 Notes of Cases, 39; *The E. U.*, 1 Spks. E. & A.

## Chapter V.

11. The extinction of fire on board of a ship (*y*) ;
12. The rescue of life or property from a ship on fire (*z*) ;
13. The removal of a ship or cargo from a place where it is in imminent danger of catching fire (*a*) ;
14. Standing by a ship in danger or distress (*b*) ;
15. The extrication of a ship from an ice-floe (*c*) ;
16. The removal from a ship of a danger, such as, *e.g.*, a wreck or another ship which has fouled her (*d*) ;
17. The saving, by purchase from the enemy, of a captured ship, and the bringing of her to a British port for the purpose of restoring her to her owners (*e*) ;
18. The saving of a ship from an impending collision (*f*).

It seems to have been thought by Lord Stowell (*g*) and by Dr. Lushington (*h*) to be open to doubt whether the simple giving of information or advice in order to save or to extricate a vessel from some local danger would or would not constitute a salvage service. In one case (*i*), however, where those who gave the advice incurred some risk, and their boat was stove in when they were boarding the vessel in danger, Dr. Lushington admitted their claim to salvage; and Marvin, in his work on Wreck and Salvage (1858), s. 110, n., after reviewing the English and American cases which bear upon the point, comes to the conclusion "that it is a fair inference from these decisions that salvage service may consist, *stricti juris*, in simply warning

Question as to information or advice constituting a salvage service.

Should probably be answered in the affirmative.

63, at p. 64. There is no reported case of salvage reward for the supply of necessary provisions alone, but there can be no doubt that it might constitute a salvage service. For instances of the supply of necessary provisions as part of the salvage service, see Pritch. Adm. Dig. 3rd ed. (1887), vol. 2, p. 1923; and *The William Tillie*, Shipp. Gaz. Weekly Summary, May 10th, 1901; *The Planet*, *ibid.* Jan. 31st, 1902; *The Border Knight*, *ibid.* Aug. 1st, 1902.

(*y*) *The Rosalie*, 1 Spks. E. & A. 188; *The Gelderland*, Shipp. Gaz. Weekly Summary, Dec. 17th, 1884; *The City of Newcastle*, 7 Asp. M. L. C. 516; *The Crown Prince*, Shipp. Gaz. Weekly Summary, Dec. 22nd, 1899;

*The Elise*, W. N. (1899) 54.

(*z*) *The Eastern Monarch*, Lush. 81.

(*a*) *The Tees and The Pentucket*, Lush. 505.

(*b*) Per Dr. Lushington, *The Undaunted*, Lush. 90, at p. 92.

(*c*) *The Swan*, 1 W. Rob. 68.

(*d*) *The Vandeyck*, 1 P. D. 42; (C. A.) 5 Asp. M. L. C. 17; *The Emilie Galine*, (1903) P. 106; *The Port Caledonia and The Anna*, *ibid.* p. 184.

(*e*) *The Henry*, Edwards, 193.

(*f*) *The Saratoga*, Lush. 318.

(*g*) *The Vrouw Margaretha*, 4 C. Rob. 103, at p. 104.

(*h*) *The Little Joe*, Lush. 88, at p. 89.

(*i*) *The Eliza*, Lush. 536.

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a vessel against her impending peril, when the effect of such warning is an escape from the peril." The reasoning in the judgment of the Privy Council in *The Strathnaver* (k) appears, by implication at least, to support this view. The claim of the plaintiffs was rejected by the appellate tribunal in that case, as it was by Dr. Lushington in *The Ranger* (l), not on the ground that a salvage claim could not in point of law be created by the giving of needful and effectual advice, but because it was held that, in point of fact, it was not through the instrumentality of the alleged advice that the vessel in danger was preserved.

The distinctions between mere towage or pilotage services on the one hand, and salvage services on the other, have already been considered in previous chapters (m).

**Life salvage:**  
*The Cargo ex*  
*Woosung.*

A service of life-salvage is not rendered by a ship taking off from an island on a barbarous but inhabited coast persons who have been wrecked there but have got ashore in safety, and who, although suffering privations from scarcity of water and from exposure, are not in any immediate danger (n).

(k) 1 App. Cas. 58, at pp. 62, 63.

(l) 9 Jur. 119. In *The Little Joe* (ubi sup.) there was a similar finding of fact.

(m) See Chap. II., pp. 24—26; Chap. IV. pp. 90—107.

(n) *The Cargo ex Woosung*, 3 Asp. M. L. C. 50. The successful appeal (1 P. D. 260, 266) did not relate to this part of the judgment. See also *The Mariposa*, (1896) P. 275.

## CHAPTER VI.

OF THE SALVAGE REWARD (*a*).

*The discretion of the Court in awarding Salvage.*

*The limits of that discretion in practice.*

*The general principles by which the Court is guided.*

*Classification of the principal matters, (a) as regards the thing  
Salved, (b) as regards the Salvors, which affect the Reward.*

*Judicial Opinions as to their relative importance.*

*Consideration in detail of :—*

*Risk to Life :*

*Risk to Property Salved :*

*The case of Derelict :*

*Value of Salved Property :*

*Skill of Salvors :*

*Conduct of Salvors :*

*Value of Salvors' Property employed in the Salvage Service and  
the Danger occasioned to it thereby :*

*Labour :*

*Special Risks and Responsibilities incurred by Salvors :*

*Damages, Expenses, and Loss of Profits incurred by Salvors :*

*The Effect on the award of an Agreement for Remuneration  
independently of Success :*

*Appeals as to amount of Award.*

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**THERE** is no absolute rule or fixed scale of remuneration in civil salvage (*b*). The amount of the salvor's reward, unless it The discretion  
of the Court.

(*a*) For a very copious digest of salvage awards, see Pritch. Adm. Dig. 3rd ed. (1887), vol. 2, pp. 1920—2118. And for awards in recent cases of towage-salvage, see Appendix A. (below, p. 264).

(*b*) See per Sir J. Nicholl, *The Ewell Grove*, 3 Hagg. 209, at p. 221. In military salvage the captors' rights as to the quantum of reward are governed by the 27 & 28 Vict. c. 25 (The Naval Prize Act, 1864), and, as to recapture

**Chapter VI.** has been ascertained, as it may be, by a valid agreement (c) between the interested parties, is dependent upon the discretion of the Court; and its award, from the nature of the case, must be always, more or less, as Lord Stowell described it, "*rusticum judicium*" (d).

"The amount of salvage reward," said Dr. Lushington, in *The Cuba*, "is not to be determined by any rules; it is a matter of discretion, and probably in this or in any other case no two tribunals would agree" (e).

"There is no jurisdiction known which is so much at large as the jurisdiction given to award salvage. There is no jurisdiction known in which so many circumstances, including many beyond the circumstances of the particular case, are to be considered [as] for the purpose of deciding the amount of salvage reward" (f).

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 544, prescribes the payment of a "reasonable amount of salvage."

The limit  
in practice.

It may be taken, however, as a safe general rule that in no case, in which the owner of the salvaged property appears (g), will the Court award the salvor more than a moiety of the value of the salvaged property.

Rule laid  
down by Sir  
John Nicholl  
in 1834.  
And by Brett,

"I do not know a case," said Sir John Nicholl, in the year 1834, "except for salvage to a king's ship, or the property small, where the Court has exceeded a moiety" (h). In 1884, Brett,

from pirates, the 13 & 14 Vict. c. 26, as amended, in regard to sects. 1, 2, 4 and 5, by the Statute Law Revision Act, 1875.

(c) As to "Agreements," see below, Chap. IX.

(d) Cited by Dr. Lushington, *The Thomas Fielden*, 32 L. J. Adm. 61, at p. 62.

(e) Lush. 14, at p. 15. Cf. also *The Glory*, 14 Jur. 676.

(f) Per Brett, M. R., *The City of Chester*, 9 P. D. 182, at p. 187.

(g) A derelict marine boiler, part of the cargo of a lost ship, was salvaged by five boatmen. In a salvage action no one appeared to defend. The net proceeds of sale of the boiler were 58l. 3s. 4d. Butt, J., awarded the

salvors 50l. and costs. *The Boiler ex Elephant*, 64 L. T. (N.S.) 543. In *The Arthur*, Shipp. Gaz. May 2nd, 1901, a derelict schooner with a cargo of timber was towed into port by two trawlers. In a salvage action the cargo owners alone appeared to defend. The net proceeds of sale of ship and cargo amounted to 946l. 4s., and out of this sum the Court awarded the salvors 600l. In *The Mazatlan*, Shipp. Gaz. Weekly Summary, Aug. 11th, 1905, 1,564l. was awarded on a value of 2,400l.; and in *The Louisa*, (1906) P. 145, the salvors received the whole of the net proceeds of ship and cargo. In neither case did anyone appear to defend.

(h) *The Britannia*, 3 Hagg. 153, at

M. R., in his judgment in *The City of Chester*, stated the practice of the Court of Admiralty on this point in these terms: "Even in the case of derelict the Court of Admiralty has hardly ever, under any circumstances, and in no known case of non-derelict has ever awarded, as for salvage reward, more than one-half of the property saved" (i). In *The Erato* (k), which was not a case of derelict, Butt, J., overruled a tender of 1,500*l.*, and awarded to the salvors 2,000*l.*, on a value of 3,700*l.* But this was a very exceptional case. There were several sets of salvors; their services were of a peculiar and meritorious character; and one of the sets had, by reason of the salvage service, suffered an actual loss which exceeded the whole value of the salvaged property before the Court.

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M. R. (Lord Esher), in 1884.

*The Erato.*

Whilst, however, as has been said above, a very ample discretion is exercised by the tribunal which has to assess the salvage reward, there are certain broad principles which the Court of Admiralty has learnt to recognise as proper guides to its judgment. The Court always seeks to combine the consideration of that which is due to the owners in the protection of their property with the liberality due to the salvors in remunerating meritorious services (l); and in doing this, it bears well in mind the risk which salvors run of getting nothing at all, however strenuous and heroic their efforts have been, by reason of the failure of those efforts to save the property in peril (m).

The general principles by which the Court is guided.

p. 154. The salvaged vessel was a derelict. As to the rule, on grounds of public policy, of rewarding liberally the salvage of a king's ship, see the judgment of Dr. Stock in *The Cosmopolitan*, 6 Notes of Cases, Suppl. p. xvii., at pp. xxxi., xxxii., and cases there cited.

(i) 9 P. D. 182, at p. 186. See, to the like effect, the judgment of the P. C. in *The Inca*, Swab. 370. For instances of awards in cases of derelict exceeding a moiety of the value of the salvaged property, see *The Jonge Bastiaan*, 6 C. Rob. 322; *The Jubilee*, 3 Hagg. 43, n.; *The Rasche*, L. R. 4 A. & E. 127; *The Hulda*, Shipp. Gaz. Weekly

Summary, Mar. 10th, 1899; *The G. N. Wilkinson*, *ibid.* May 13th, 1905; and the cases cited above, n. (g).

(k) 13 P. D. 163. *The Erato*, after stranding in the Red Sea, had been temporarily left by her master and crew, but only with the intention of procuring assistance.

(l) See per Sir C. Robinson, *The Thetis*, 3 Hagg. 14, at p. C2.

(m) See on this, per Lindley, L. J., *The City of Chester*, 9 P. D. 182, at p. 202; Butt, J., *The Mark Lane*, 15 P. D. 135, at p. 136. Salvors may have acted under an agreement entitling them to some remuneration independently of success. The effect

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Public  
interests con-  
sidered.

The Court regards the reward of salvage services not merely as a compensation to be meted out *pro opere et labore*, or according to the exact amount of benefit conferred in the particular case, but also as the proper subject of important considerations of a public and general character. "The principles upon which the Court of Admiralty proceeds lead to a liberal remuneration in salvage cases; for they look not merely to the exact *quantum* of service performed in the service itself, but to the general interests of the navigation and commerce of the country, which are greatly protected by exertions of this nature" (*n*).

"It is not a mere question," said Sir John Nicholl, in *The Industry* (*o*), "of work and labour, not a mere calculation of hours, though time is undoubtedly an ingredient; but there are various facts for consideration,—the state of the weather, the degree of damage and danger to the ship and cargo, the risk and peril of the salvors, the time employed, the value of the property; and, when all these are considered, there is still another principle—to encourage enterprise, reward exertion, and to be liberal in all that is due to the general interests of commerce, and the general benefit of owners and underwriters, even though the reward may fall upon an individual owner with some severity."

Illustrated by  
the treatment  
of salving  
steamships.

A frequent illustration of the attention which the Court of Admiralty always pays to considerations of a public and general nature, is afforded by the peculiar favour which it extends to the claims of steamships. "It is of great importance," observed Dr. Lushington (*p*), "and of great value to property salvaged, that the service should be performed with celerity; and I have ever held, with regard to steamships, that their very power to perform services with a rapidity which belongs to no other description of vessel, and in a manner which can be effected by no other class of vessel, is that which entitles them to a

of such an agreement is to diminish an award by the Court. See below, p. 163.

(*n*) Lord Stowell, *The William Beekford*, 3 C. Rob. 355, at p. 356.

(*o*) 3 Hagg. 203, at p. 204. See also, by the same judge, *The Hector*, 3 Hagg. 90, at p. 95; *The Clifton*, 3

Hagg. 117, at pp. 120, 121; and Lindley, L. J., *The City of Chester*, 9 P. D. 182, at p. 203; Story, J., *The Henry Eubank*, 1 Sumn. (Amer.) 400, at p. 425.

(*p*) *The Ella Constance*, 33 L. J. Adm. 189, at p. 193. Cf. also, by the same judge, *The Kinglock*, 1 Spks. E. & A. 263, at p. 267.

higher rate of reward; and thereby not only are the services performed in an infinitely more convenient way, but risk to property is saved" (q). Chapter VI.

For similar reasons the Court encourages by its liberality those steamers which are built and maintained for the purpose of performing salvage services. And of steam-tugs built and maintained specially for salvage purposes.

In *The Envoy*, where salvage services had been rendered by two steam-tugs, off the coast of Devonshire, in fine weather and with a moderate sea, Butt, J., after referring to these favourable circumstances, is reported to have said in his judgment:—"But then we come to another view of the matter, and that is, that we have here a position in which ships occasionally find themselves, a position of the greatest danger, and we have the fact that these two powerful tugs are kept by the plaintiffs, with the fires of the one or other of them always alight, to render assistance to vessels that may require it. To my mind, one of the most important functions of this Court is to encourage the maintenance of powerful and efficient steam-tugs around our coasts, to be in constant readiness to assist vessels in distress. Not only in the course of the year is a large amount of property saved by these means, but a considerable sacrifice of life is prevented. Therefore, the principle we go upon is not that of a *quantum meruit*, but of giving such an award as will encourage people to keep vessels of adequate size and dimensions ready to go out" (r).

In *The Glengyle* (s) very meritorious services were rendered to a vessel in imminent peril of sinking by two steamers specially built for and solely employed in rendering salvage services. On a value of 76,596*l.*, Barnes, J., awarded the salvors 19,000*l.* In the course of his judgment, after citing with approval the passage from Lord Stowell's judgment in *The William Beckford* already referred to (t), and the remarks of

(q) See, to the like effect, per Sir John Nicholl, *The London Merchant*, 3 Hagg. 394, at p. 401; and cf. per Lindley, L. J., *The City of Chester*, 9 P. D. 182, at p. 203; per Butt, J., *The Benlarig*, 14 P. D. 3, at p. 6.

(r) *Shipp. Gaz. Weekly Summary*, Feb. 28th, 1888.

(s) (1898) P. 97. The award was

upheld in the C. A. (*ibid.*) and in the H. of L. (1898, A. C. 519). For other examples of the same liberality, see *The Aphrodite*, *Shipp. Gaz. Weekly Summary*, Jan. 19th, 1900; *The Camperdown*, *ibid.* Dec. 21st, 1900. Cf. also *The St. Paul*, 82 Fed. Rep. 114; 86 Fed. Rep. 340.

(t) P. 130.



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Butt, J., in *The Envoy*, cited above, the learned judge said: "The maintenance and establishment of salvage steamers, such as *The Hermes* and *The Neva*, are for the general benefit of owners and underwriters and others interested in sea-going vessels and their cargoes, and the crews and passengers of such vessels, and, guided by the principles above stated, the Admiralty Court will be liberal in its awards in respect of services rendered by salvage steamers even though the awards may fall somewhat heavily on individual owners. The owners of salvage steamers invest a large amount of capital in them, and maintain them and their crews, divers, and appliances at great expense, and have no remuneration to look to except that which may be earned by occasional salvage services" (u).

And of salvage services to passenger-carrying ships.

Upon the same principle—the consideration of large public interests—it is the rule of the Court of Admiralty to remunerate generously all services rendered to passenger-carrying vessels. Speaking of this class in *The Ardincaple*, Sir John Nicholl said (x): "Humanity requires that every possible encouragement, in the way of liberal reward, should be given, in order to induce a prompt and efficient assistance to them."

And of foreign help to British vessels.

Upon the same principle, again, the Court will make a liberal award in a case relating to the meritorious exertions of a foreign master and crew in the preservation of British interests (y).

The ingredients and incidents of a salvage service which affect the award.

But it is not only from the application of these general principles, important as they are, that the Court of Admiralty derives assistance in exercising its discretion as to the amount to be awarded for salvage. "Some circumstances are always material for consideration, and these have been ascertained by experience, and the Court has for its guidance a long course of judicial decisions to assist it in coming to a proper conclusion in each particular case" (z). These "material circumstances,"

(u) (1898) P. 97, at pp. 102, 103.

(x) 3 Hagg. 151, at p. 153; cf. also *The London Merchant*, 3 Hagg. 394, at p. 400; per Sir J. Hannen, *The Werra*, 12 P. D. 52, at p. 55. For recent instances of liberal awards for such services, see *The La Champagne*, Shipp. Gaz. Weekly Summary, June 17th,

1898; *The Toscana*, Shipp. Gaz. Apr. 16th, 1904 (the award was reduced on appeal: (1905) P. 148); *The Assouan*, Shipp. Gaz. June 28th, 1905; and Appendix A. (below, p. 264).

(y) *The Salacia*, 2 Hagg. 262, at p. 270.

(z) Per Lindley, L. J., *The City of Chester*, 9 P. D. 182, at p. 202.

which Dr. Lushington, in his judgment in *The Charlotte* (a), Chapter VI. calls "the many and diverse ingredients of a salvage service," it is necessary now to consider in detail. They may be classified as follows (b) :—

A. As regards the thing salvaged :

Classification.

- (1.) The degree of danger to human life.
- (2.) The degree of danger to property.
- (3.) The value of the property as salvaged.

B. As regards the salvors :

- (1.) The degree of danger to human life.
- (2.) Their skill and conduct.
- (3.) The value of the property employed in the salvage service.
- (4.) The danger to which the property is exposed.
- (5.) The time and labour expended in the performance of the salvage service.
- (6.) Responsibilities incurred in the performance of the salvage service, such, *e.g.*, as risk to the insurance, and liability to passengers or freighters through deviation or delay.
- (7.) Loss or expense incurred in the performance of the salvage service, such, *e.g.*, as detention, loss of profitable trade, or repair of damage caused to ship, boats, or gear.

Where all or many of these elements are found to exist, or some of them are found to exist in a high degree, a large reward is given ; where few of them are found, or they are present only in a low degree, the salvage remuneration awarded is comparatively small.

There has been some difference of judicial opinion as to whether, generally, the merit of a salvage service ought to be regarded first from the standpoint of the risk to the salvor, or from the standpoint of the value of the salvage service.

Judicial opinions as to the relative importance of these considerations.

According to Lord Stowell, personal risk in the performance of the salvage service is the element which confers the best title

(a) 3 W. Rob. 68, at p. 71.

to Receivers of Wreck and other Officers, 1895, Art. 173,

(b) See Board of Trade Instructions

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to an ample award. "What enhances the pretensions of salvors most is the actual danger which they have incurred; the value of human life is that which is, and ought to be, principally considered in the preservation of other men's property; and if this is shown to have been hazarded, it is most highly estimated" (c). On the other hand, Sir John Nicholl, in *The Traveller* (d), and in *The London Merchant* (e), expressed the view that, whilst the risk and the skill of those employed, and the length of the service are also to be considered, the primary ingredients and objects in a salvage service are the lives and property in jeopardy. And Lord Chelmsford, in delivering the judgment of the Judicial Committee of the Privy Council in *The Fusilier* (f), observed that "it was not quite correctly said, in the argument at the Bar, that what is risked is the first thing to be regarded, and the next, the services which are rendered. It would have been more accurate to have reversed the order of these considerations, and to have said that the first thing to be regarded is the value of the services with reference to the amount of property rescued from peril, and the next, how far the merit of those services is enhanced by the risk to life or property which has been involved in them." "The first thing to be considered," said Sir James Hannen in *The Werra* (g), "is the value of the property saved. By that I do not mean that it is to be taken as absolutely the most important element, but that it is the subject-matter in respect of which the action arises." According to Sir Francis Jeune, "the first, and perhaps the main element in an award of salvage, is the risk to which a salvaged ship and her cargo are exposed" (h).

In *The City of Chester* (i), Lindley, L. J., in the course of his judgment, summed up the principal considerations affecting

## Summary of

salvage remuneration in the following terms: "The first matter

(c) *The William Beckford*, 3 C. Rob. 355, at p. 356; cf. also, per Sir J. Nicholl, *The Clifton*, 3 Hagg. 117, at p. 121. "The risk incurred by the salvors themselves, if necessarily incidental to the performance of the service, is the most important ingredient in estimating the amount of salvage to be awarded." Board of Trade Instructions to Receivers of Wreck and other Officers, 1895, Art. 173 (c).

(d) 3 Hagg. 370, at p. 371.

(e) 3 Hagg. 394, at p. 395.

(f) Br. & L. 341, at p. 350.

(g) 12 P. D. 52, at p. 53.

(h) *The Janet Court*, (1897) P. 59, at p. 62.

(i) 9 P. D. 182, at p. 202. And see per Lord Esher, M. R., *The Lindfield* (1894), 10 Times L. R. 606.

of consideration is the nature of the service rendered, the danger from which the one ship has been saved, and the danger to which the other ship has been exposed. Under this head have to be considered the skill and courage of the salvors, and the risk of life and death as well to the saved as to their rescuers. A salvage service, which hardly exceeds ordinary towage, is naturally remunerated on a very different scale from an heroic rescue from imminent destruction. The next matter for consideration is the value of the property saved."

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the principal considerations in the assessment of the award by Lindley, L. J.

It will now be convenient to examine in order the various elements of a salvage claim which have been enumerated above.

The ingredients and incidents of salvage service, affecting the award, considered in detail.

Whatever view be taken as to the proper order of precedence in the classification of the ingredients of a salvage service, it is certain that the Court attaches to none a higher value than to danger to human life, whether on board the salving or on board the salved vessel. "However great may be the danger to the property itself," said Dr. Lushington in *The Thomas Fielden* (j), "if it is wholly unattended with the risk to human life, it assumes much less value than when under circumstances where human life is put in peril. . . . I have ever held the opinion that when once I can come to the conviction that human life has been at stake, even for a short time, it is the duty of the Court amply to reward the persons concerned, and for obvious and plain reasons; first, because, from the necessity of the case, a very great reward should be given wherever there has been a sacrifice of human life; and secondly, that human life is above all other considerations, and ought never to be exposed to unnecessary hazard and risk. These are the principles." Salvage, in respect of the preservation of human life is, under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 544 (2), payable by the shipowner in priority to all other claims for salvage.

Danger to life.

The circumstances of danger which may have to be considered in assessing the salvage award, are obviously infinite in their variety. The character of the salved ship; her condition as regards her seaworthiness, her boats, her motive power, and

Danger to property salved.

(j) 32 L. J. Adm. 61, at p. 62. See also *The Bartley*, Swab. 198, 199.

Chapter VI. manœuvring; the number, capacity, health, and spirit of her crew; the skill and knowledge of her commander; the nature of the locality; the season of the year at which the services are rendered, and, if the weather at the time is not tempestuous, the chance of its becoming so (*k*); the character of the cargo, as, for example, if it be perishable, or dangerous; the prospect of other efficient means of assistance (*l*)—all these constitute but a few, though, perhaps, the most frequent, of the considerations which in regard to the element of danger to the property saved, the Court of Admiralty may have to weigh in fixing the salvor's recompense.

Different risks to ship, cargo and freight may necessitate separate awards.

It may happen that the various interests of which the saved property is made up—ship, cargo, and freight—have been exposed to different degrees of danger. In such a case the Court may depart from its usual course of awarding a gross sum as salvage remuneration, and make a separate award against each portion of the saved property. Sir Gorell Barnes adopted this method in the very recent case of *The Velox* (*m*). There the steamship *Velox*, while on a voyage from Gravingsund to Hull with a cargo of herrings, in consequence of bad weather ran short of coal, and had to take towage assistance in order to reach port. If the cargo of herrings on board her had remained at sea forty-eight hours longer than they in fact did, they would have become valueless. In an action to recover salvage for the services rendered to the *Velox*, her cargo and freight, which were valued at 1,875*l.*, 1,060*l.*, and 136*l.* respectively, Sir Gorell Barnes said: "It appears to me that the tender of 300*l.* would have been sufficient if I were dealing with the case of the ship alone; but I have to consider the case of the ship and cargo, and I propose to take a course in this case, which is not perhaps common, but which seems to me to be in accordance with sound principles. I propose mainly to have in view in making my award, the real danger from which the different properties were rescued. The ship was not rescued from anything like the same danger as the cargo, because she was rescued from the possibility of floating about and getting ashore, or of being

(*k*) See *The Gracco*, 2 W. Rob. 294, at p. 296; *The Kenmure Castle*, 7 P. D. 47, at p. 49.

(*l*) See per Sir J. Hannen, *The Werra*, 12 P. D. 52, at p. 54.

(*m*) (1906) P. 263.

picked up by somebody else. The cargo was rescued not merely from that particular risk, but also from the risk of floating about until it became rotten and perfectly valueless. Giving this matter the most careful consideration I can, I think the proper award to make is to award separately against the ship 180%, and against the cargo and freight—because the freight would have perished with the cargo—420%.” (n).

There is only one position of danger in regard to the reward for the salvage of property—the case of derelict (o)—of which it would serve any practical purpose to make particular mention. It was undoubtedly the ancient practice of the Court of Admiralty to award to salvors of derelict one half of the value of the salvaged property (p). Even in modern judgments language is to be found which seems to recognise the title of the salvors of derelict to this scale of reward, and so to exempt this case from the exercise by the Court of that discretion which it uses in all other salvage cases. Thus, for example, in *The Watt* (q), Dr. Lushington is reported to have said, “The case, therefore, being, strictly speaking, a case of derelict, the Court is, I think, bound to give the salvors a moiety of the property salvaged, subject to deductions.” But it is now clearly settled that there is no rule entitling the salvors of derelict, as of right, to any such proportion of the value of the salvaged property, but the service, as in any other case of salvage, is to be rewarded adequately, according to the degree in which the various ingredients of a salvage claim, which have been enumerated above, are found to be present. As the fact of a vessel being derelict generally implies a high degree of danger to it, the salvors of such a vessel will generally, on that score, be entitled to a high rate of reward; but the reward is to be assessed upon the same principles as the reward in any other case of salvage service, and danger to the property salvaged is only one ground, although, of

(n) (1906) P. 263, at pp. 266, 267.

(o) As to what is “derelict,” see above, Chap. III. p. 61.

(p) See *The Blenden Hall*, 1 Dods. 414, at p. 421; *The Effort*, 3 Hagg. 165, 167; *The Thetis* (P. C.), 2 Knapp, 390, at p. 410. The practice was one

of great antiquity in maritime Courts. See “*Les Costumes de la Mer*” (probably about A.D. 1350), Black Book of the Admiralty, ed. Twiss, vol. iii. pp. 439, 441, 619; *The Wisby Town-Law on Shipping* (A.D. 1320–61), c. xiii.; *ibid.* vol. iv. p. 405.

(q) 2 W. Rob. 70, at p. 71.

**Chapter VI.** course, a very important ground, for a large reward. It is quite possible that in other respects, as for example, in respect of their danger, skill, and loss of time, the merit of the salvors of derelict may be less than in many cases of non-derelict. The law upon the point has been established by Lord Stowell in *The Aquila* (r), by Dr. Lushington in *The Florence* (s) and *The Martin Luther* (t), by Sir James Hannen in *The Anna Helena* (u), and by the judgment of the Privy Council (pronounced by Dr. Lushington) in *The True Blue* (x). "Now, in truth and in fact, when the Court comes to consider the question of derelict or not, it takes into consideration the danger to the property; and so it does where the vessel is not derelict; the property may be in infinite danger though it is not derelict; but the Court always considers that one of the material ingredients, upon which it gives a large salvage, is the danger to the property; and the danger may be (we do not say it is, but the danger may be), and in certain cases of salvage it is, as great to the property which is not derelict as it is in other cases where the property is derelict. Therefore, the proper course to pursue in all these cases is to consider the fact of derelict as being, as it were, an ingredient in the degree of danger in which the property is" (y).

In the more recent case of *The Janet Court* (z), Sir Francis Jeune, in the course of his judgment, said: "There is no magic in the term 'derelict'; but what is important is that it imports a certain condition of things introducing elements which tend, on the general principles of salvage, to raise the amount of the salvage award. The first, and perhaps the main, element to be considered in an award of salvage is the risk to which the ship and her cargo are exposed. In the case of a derelict this risk is generally very high; . . . . The second consideration to which the case of a derelict gives rise is that she has no men on board of her, and has to be approached without such aid as they could afford; . . . . Then there is another condition which was fulfilled, in this instance, to a considerable extent, because it was necessary to put four men on board her, . . . and the

(r) 1 C. Rob. 37.

(s) 16 Jur. 572.

(t) 2 M. L. Cas. 216.

(u) 5 Asp. M. L. C. 142.

(x) L. R. 1 P. C. 250.

(y) *Ibid.* at p. 256.

(z) (1897) P. 59.

labour of the remainder of the crew of the salving vessel left on board their own vessel was, of course, greatly increased" (a). Chapter VI.

The award in cases of derelict has been often a moiety (b), or about a moiety (c), of the value of the salved property; in a few cases of an exceptional character, more than a moiety (d), and rarely less than one-third (e). But, where the value of the salved property has been very large, even less than one-tenth has been awarded. Thus, in *The Blenden Hall* (f), on a value of 72,000*l.*, Lord Stowell awarded the salvors 7,000*l.*; and in *The Amérique* (g), where the value was 190,000*l.*, the Judicial Committee of the Privy Council reduced an award of 30,000*l.* to 18,000*l.* In *The Scindia* (h), the same tribunal, on a value of 30,000*l.*, increased an award of 2,000*l.* to 3,000*l.*, or exactly one-tenth.

"The value of the property salved," said Sir John Nicholl in *The Ewell Grove* (i), "is certainly not an immaterial circumstance, for in proportion to that value is the benefit to the owners, and that is one of the primary principles in settling the amount of remuneration."

"It is in itself," said Sir James Hannen in *The Werra* (j), "an important ingredient in fixing the amount of remunera-

(a) (1897) P. 57, at pp. 62, 63.

(b) See per Lord Stowell, *The L'Esperance*, 1 Dods. 45; *The Blenden Hall*, *ibid.* 414, 425; per Sir John Nicholl, *The Ewell Grove*, 3 Hagg. 209, at p. 221; and, for examples, see *The L'Esperance* (*sup.*); *The Frances Mary*, 2 Hagg. 90; *The Inca*, 12 Moore, P. C. 189; *The Livietta*, 8 P. D. 24. *The Elliotta*, 2 Dods. 75, in which a moiety of the value was awarded, was not precisely a case of derelict but as nearly so as possible.

(c) See, for examples, *The Hebe*, 4 P. D. 217; *The Craigs*, 5 P. D. 186; *The Austin Friars*, Shipp. Gaz. Weekly Summary, May 5th, 1893; *The Schiffswerft*, *ibid.* July 9th, 1897; *The Janet Court*, (1897) P. 59.

(d) See, for examples, *The Jonge Bastiaan*, 5 C. Rob. 322; *The Reliance*, 2 Hagg. 90, n.; *The Jubilee*, 3 Hagg.

43, n.; *The Rasche*, L. R. 4 A. & E. 127; *The Hulda*, Shipp. Gaz. Weekly Summary, Mar. 10th, 1899; *The G. N. Wilkinson*, *ibid.* May 13th, 1905; and the cases cited above, p. 128, n. (g).

(e) Per Sir J. Nicholl, *The Ewell Grove*, 3 Hagg. 209, at p. 221. In *The Cargo ex Venus*, L. R. 1 A. & E. 50, where one-third of the value of salved cargo was awarded, it does not appear from the Report whether the cargo was derelict or not.

(f) 1 Dods. 414. The salved vessel was practically, though, perhaps, not strictly derelict (see *The Cosmopolitan*, 6 Notes of Cases, Suppl. xvii. at p. xxx.).

(g) L. R. 6 P. C. 468.

(h) L. R. 1 P. C. 241.

(i) 3 Hagg. 209, at p. 221.

(j) 12 P. D. 52, at p. 53.



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tion." The value of the salvaged property, said Lord Esher, M. R., in *The Lindfield* (k), is "a most material and important consideration." Where the property salvaged is large, the amount of the reward usually bears a much smaller proportion to the value of the property than in cases where the property saved is small. The reason for this, as pointed out by Lord Stowell in *The Blenden Hall* (l), is, that in the case of property of small value a small proportion would not hold out a sufficient consideration; whereas in cases of considerable value a small proportion would afford no inadequate remuneration. "It is obvious that whilst a small percentage on a very large value might be proper in one case, the same percentage might be a very inadequate remuneration in another case" (m). It would not, however, be correct to say, as has been sometimes argued on behalf of the owners of salvaged property of great value, that this greatness of value will be regarded by the Court of Admiralty only for the single purpose of remembering that the Court is enabled thereby out of an ample fund fitly to remunerate meritorious services well performed. In the important case of *The Amérique* (n), referred to above, upon the question of the remuneration awarded in the case of derelicts, the Privy Council distinctly rejected any such view, and enunciated the law in the following terms:—  
 "The rule seems to be that, though the value of the property salvaged is to be considered in the estimate of the remuneration, it must not be allowed to raise the *quantum* to an amount altogether out of proportion to the services actually rendered" (o).

The rule laid down by the Privy Council in *The Amérique*.

Reasons, on grounds of public policy, for liberality where the value of the salvaged property is great.

Further, where the property salvaged is of great value, the Court of Admiralty, in assessing the reward, looks not merely at the merits of the service or the benefit to the owner of the salvaged property, but to the larger considerations of public interest, its regard for which has been already noticed in this chapter. As meritorious services are not unfrequently rendered when the fund at the disposal of the Court is insufficient, without depriv-

(k) (1894), 10 Times L. R. 606. And see *The Glengyle*, (1898) P. 97, at pp. 103, 111.

(l) 1 Dods. 414, at p. 421. The passage is quoted with approval by the judgment of the P. C. in *The Amérique*, L. R. 6 P. C. 468, at p. 475.

(m) Per Lindley, L. J., *The City of Chester*, 9 P. D. 182, at p. 202. And see per Barnes, J., to the same effect, *The Glengyle* (*ubi sup.*), at p. 103.

(n) L. R. 6 P. C. 468.

(o) *Ibid.* p. 475. And see *The Glengyle* (*ubi sup.*), at p. 103.

ing the owners of the salved property of all benefit from their preservation, to enable it to decree an adequate reward (*p*), the Court will, when the property salved is of great value, in consideration of this, and for the general encouragement of salvage services, and not merely because the benefit to the owner of the property has been great, consider the value of the property as entitling the salvor to an enhanced reward (*q*).

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The salvage reward always bears a proportion to the skill and knowledge displayed in the performance of the salvage service. It has already been pointed out in a previous chapter (*r*), that, if through any cause the result of the action of the salvors, however well intended and laborious, is unsuccessful, or if, on the whole, there is found to be no balance of advantage to the owners of the property in peril, no salvage reward is due. We have now to notice further that, even if the result is not altogether unsuccessful, and the efforts of the salvors have, on the whole, distinctly benefited the owners of the property in peril, the reward will be less (*s*) than it otherwise would have been, if the Court holds that at the same time a loss has been inflicted upon the owners of salved property by any want of that measure of skill and knowledge on the part of the salvors which might reasonably be expected from them. What that measure is has been described by Dr. Lushington in the case of *The Lockwoods* (*t*): "When persons undertake to render salvage service, knowledge and skill are to be expected from them according to their stations in life. It is no fault in a fisherman or common sailor not to have all the knowledge of a pilot, nor in a pilot that his local knowledge does not extend beyond the limits of his practice; but a fisherman or a sailor ought to know what belongs to his vocation, and so ought a pilot. Nor is there any injustice in expecting skill and knowledge in proportion to the station of individuals, for salvage

Skill displayed by the salvors.

Unskilfulness reduces the award.

The degree of skill which the Court expects salvors to display.

(*p*) For an example, see *The Erato*, 13 P. D. 163.

(*q*) See *The Earl of Eglinton*, Swab. 7, at p. 8.

(*r*) Chap. II. pp. 31, 36.

(*s*) But not necessarily to the full

extent of the loss occasioned by the want of skill or knowledge. See below, p. 142, and per Dr. Lushington, *The Cape Packet*, 3 W. Rob. 122, at p. 125; *The Perla*, Swab. 230, at pp. 231, 232.

(*t*) 9 Jur. 1017, at p. 1018.

Chapter VI. reward always bears a proportion to the skill and knowledge required to be shown" (u). In *The Magdalen* (x), a case of the salvage of a derelict vessel performed in part by H.M.S. *Bulldog* and *Lightning*, the claim for salvage was resisted on the ground that the derelict had been so improperly treated by those salvors in the way in which they had turned the vessel over in shallow water, instead of taking it into deep water and parbuckling it, that they were disentitled to any salvage reward. Dr. Lushington, whilst he decided, with the advice of the Trinity Masters, that a grave error had been committed in the treatment of the vessel, held also that justice would be done, not by wholly rejecting the salvage claim, but by making a deduction from the amount which the Court would have otherwise decreed. In the course of the judgment he discusses the degree of want of skill or want of knowledge which the Court would regard as affecting the salvage claim. "If it be such an error that men of skill and ability would say, from what had been done, in attempting to render the salvage service, that, if they had had to undertake the operation, they would have considered it so doubtful as to the method of proceeding that either of two methods of proceeding might have been adopted, and that they would have tried one way, and that, if that had been unsuccessful, they would have adopted another, the Court would not look upon that error in a severe light. But if there were measures pursued which were so grossly unskilful as to make it evident that ordinary skill and ability were wanting, that would be taken into consideration by the Court; but mark—the whole of the salvage would not be forfeited for that error, but the Court, administering its equitable jurisdiction, would take into consideration the consequences that would fall on the owners, and would regard the injury that had fallen on them. This is important, because it would not be by way of punishing the salvors who had committed the error, but by way of indemnifying the

(u) See also *The Neptune*, 1 W. Rob. 297, at p. 300; *The Cape Packet*, 3 W. Rob. 122, at p. 125; and, for a case of diminution of salvage for loss due to a salvor's ignorance, *The Rosalie*, 1 Spks. E. & A. 188, 191. In *The*

*Duisberg*, Shipp. Gaz., Mar. 16th, 1901, the master of the salvaging vessel was refused any reward because, through an error of judgment, he had caused injury to the salvaged vessel.

(x) 31 L. J. Adm. 22.

owners who had been injured by the want of skill of the salvors." Chapter VI.

In *The Perla* (y), salvors negligently and unskilfully tried to bring a derelict into a harbour which was unsafe for a vessel of her size, and she took the ground and was much damaged. For this want of care and skill, Dr. Lushington held that he must give a less sum for salvage than he would otherwise have awarded.

In *The Rosalie* (z), where damage had been caused to the salvaged ship by ignorance of a salvor, without heedlessness, there was a similar reduction of salvage reward.

In *The Dwina* (a), where the salvors, whilst rendering their services, by want of skill brought their ship into collision with the salvaged ship, Sir Charles Butt diminished the amount of salvage award by the full amount of damage resulting to the salvaged ship by reason of the collision.

In considering whether a salvor has shown such a want of reasonable skill and knowledge as ought materially to affect the Court's award, or is guilty only of an error of judgment, the Court will incline to the lenient view (b), and will take into favourable consideration any special circumstances which tend to exonerate the salvor from blame, such as, *e.g.*, a request for help, the suddenness of the emergency, or the absence of more efficient means of succour.

The Court inclines to a lenient view towards salvors.

The last-mentioned point was especially noted by Dr. Lushington in the case of *The Dygden* (c): "When persons offer their services to vessels in distress, and there are no other individuals on the spot capable of rendering more efficient assistance, this Court must look with considerable indulgence at their efforts; because, being the only aid that can be procured, and offered in a state of great exigency, every allowance must be made if they are not possessed of adequate knowledge to perform the duty they had undertaken. But different considerations will apply

(y) Swab. 230.

(z) 1 Spks. E. & A. 188.

(a) (1892) P. 58.

(b) In *The Cheerful* (11 P. D. 3), the material facts of which have been set out above (Chap. II. p. 36), Butt, J., refused to hold the claimants of sal-

vage responsible for damage caused by them to the vessel proceeded against, although it resulted from an unskilful manœuvre on their part. See also, per Sir R. Phillimore, *The C. S. Butler*, 2 Asp. M. L. C. 237, at p. 238, 239.

(c) 1 Notes of Cases, 115.

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to the conduct of individuals who assume the character of salvors, when there are persons competent to discharge those duties" (*d*).

The salvors' conduct.

As the good conduct of salvors, their promptitude, their courage, their energy, and their diligence will, according to the degree in which these qualities are displayed, enhance their claim to a liberal award; so, on the other hand, any serious misconduct or negligence on their part, or on the part of their agents (*e*), will work, at least, a reduction. In extreme cases, as the law has been clearly laid down by the judgment of the Privy Council in *The Atlas*, which has been quoted in a previous chapter (*f*), misconduct may work an entire forfeiture of reward, even though the property in peril has been wholly or in part preserved. "The principles are these," said Dr. Lushington in *The Magdalen* (*g*), "that salvage is forfeited by wilful misconduct, bad faith, an intention not to do the whole of the duty, or an intention to protract doing that duty for the purpose of piracy." Thus, the reward was held to be forfeited

Misconduct, in extreme cases, may cause forfeiture of all right to award.

Examples.

where the claimants of salvage improperly had retained possession of the salvaged ship and cargo, and dealt with the cargo by selling it in disregard of the owners' interests (*h*); where they had refused to allow the master and crew of the salvaged vessel, who had temporarily abandoned her in order to get assistance, to come on board of her on their return (*i*); where they had forcibly resisted the exercise by the owners of their right to save the property themselves (*k*); where, after rescuing a vessel from danger, they had refused to take her master on board of her, and had improperly declined the assistance of a tug (*l*); where

(*d*) 1 Notes of Cases, pp. 116, 117.

(*e*) Salvors are responsible for the mistake or misconduct of an agent employed by them to assist (as the master of a steam tug), in so far that the reward may be paid out of a fund thereby diminished; but *quære*, if otherwise or further, *The Atlas* (P. C.), Lush. 518, at p. 529. As to the misconduct by one salvor or one set of salvors affecting the claims of others, see below, Chap. VII. pp. 200, 201. As to offences with respect to wreck and salvage, see the M. S. Act, 1894, ss. 511—515, 518, 519, 535—537.

(*f*) Chap. II. p. 39.

(*g*) 31 L. J. Adm. 24, at p. 26.

(*h*) *The Lady Worsley*, 2 Spks. E. & A. 253.

(*i*) *The Capella*, (1892) P. 70. For a case where salvors were held to have been justified in refusing to allow the master and crew of the salvaged vessel to go on board of her before completion of the salvage services, see *The Elise*, W. N. (1899) 54.

(*k*) *The Barefoot*, 14 Jur. 841.

(*l*) *The Yan Yean*, 8 P. D. 147.

they had plundered the cargo of the vessel which they had saved (*m*); and where they had, with riot and uproar, and against the wish of the owner of the salved ship, tried to prevent the employment of a steamer which would more efficiently have completed the service which they had begun (*n*). If a second set of would-be salvors should, without reasonable cause, dispossess a first set of salvors; or if a salvor should be found agreeing, in the case of a ship with cargo on board, to save the ship and not the cargo, or doing anything of this nature: it has been said by Lord Stowell and Dr. Lushington, as regards the first case (*o*), and by Dr. Lushington as regards the second (*p*), that a total forfeiture of salvage should follow. And Sir Gorell Barnes has expressed the view that an arrangement between salvors and the master of the salved vessel that the latter should be paid any portion of the salvage award, would be an act of misconduct for which the salvors would forfeit all right to reward (*q*).

The burden of proving misconduct so serious as to deprive successful salvors of all reward lies upon those who impute it. "The presumption, of course, is in favour of innocence, and this rule applies so strongly in favour of salvors, that Dr. Lushington, in the case of *The Charles Adolphe* (*r*), has laid it down that the evidence must be 'conclusive' before they are found guilty; by which he must be understood to mean that it must be such as leaves no reasonable doubt in the mind of the judge" (*s*).

But the burden of proof lies on those who assert the misconduct.

Of the diminution of the salvage reward on account of misconduct which is not of so gross a kind as to work an entire forfeiture, there are numerous examples in the Reports. Thus, in *The Dantsic Packet* (*t*), certain Essex smackmen, who in bad weather had gone to the assistance of a brig off the Knock Sand, and who would otherwise, in the opinion of the Court (Sir John Nicholl), have been held entitled to a liberal remuneration, were

The diminution of the reward where some misconduct, but not sufficient to cause forfeiture, is proved. Examples.

(*m*) *The Florence*, 16 Jur. 576.

(*n*) *The Martha*, Swab. 489.

(*o*) *The Blendon Hall*, 1 Dods. 414, at p. 418; *The Fleece*, 3 W. Rob. 278, at p. 281.

(*p*) *The Westminster*, 1 W. Rob. 229, at p. 235.

(*q*) *The Kolpino*, 73 L. J. P. 29, at p. 30.

(*r*) Swab. 153, at p. 156.

(*s*) The judgment of the P. C., *The Atlas*, Lush. 518, at p. 529.

(*t*) 3 Hagg. 383.

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awarded only a small sum, by reason of their misconduct in interfering with the employment of additional assistance, and endeavouring to exclude a second set of salvors. In *The Glory* (u), a case of similar misconduct, Dr. Lushington awarded the salvors 100*l.* instead of the 300*l.* which he would, but for their misconduct, have awarded them, and he allowed them only two-thirds of their costs. In *The Dossitei* (v), a ship in great distress was taken by the salvors and anchored in a place of comparative safety. She might have been placed in perfect safety if the salvors had availed themselves of further assistance which was offered them; but, in order to get a greater gain for themselves, they chose to leave her for six hours at anchor in a position of some risk, whilst they proceeded to fetch ropes and spars from their own port. She was ultimately brought by them safely into harbour. Upon a value of 10,000*l.* the Court, on account of the salvors' misconduct, instead of awarding, as it would otherwise have done, a large sum for salvage, awarded only 50*l.* In *The Louisa* (x), from an award of 1,200*l.* for salvage of a derelict, Dr. Lushington deducted 20*l.* for clothes of the crew of the derelict which were used by the salvors and not restored. In *The Pinna* (z), where salvors who had brought a damaged vessel into a position of safety improperly refused to deliver up possession of the salvaged property to the owners, Sir James Hannen marked his sense of the misconduct by refusing the salvors any costs.

If the misconduct is slight, the Court may, at any rate, deprive the salvor of his costs.

The misconduct need not, in order to affect the award, have occasioned actual damage.

It is not, it is to be observed, necessary in order that the amount of the salvage awarded should be reduced on account of misconduct on the part of the salvors, that the owners of the salvaged property should have suffered material injury by reason of it. In the case of *The Glory*, referred to above, Dr. Lushington, in the course of his judgment, observed, that he could not say, with justice to the salvors, that their misconduct, which consisted in preventing the use of the assistance offered by a steamer, and on account of which he gave them a smaller award than he would otherwise have given, had necessarily entailed upon the owners the loss which happened (a).

(u) 14 Jur. 676.

(v) 10 Jur. 865.

(x) 7 Jur. 182.

(z) 6 Asp. M. L. C. 313.

(a) 14 Jur. 676, at p. 678.

In *The John and Thomas* (b), Lord Stowell expressed the view that even services of the highest class might be lessened, in the judgment of the Court, merely by exorbitant demands. And in *The Marie* (c), the learned judge of the Cinque Ports (Mr. A. Cohen, Q.C.) held, that the amount to which the salvors in that case would otherwise have been entitled should be diminished, on account of their violent and overbearing conduct on board the salvaged brig, although he entertained considerable doubt whether the master of the brig had sustained any pecuniary loss at all by what was done by the salvors, and he saw no reason to believe that the salvors did that which occasioned any extra expenditure.

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It is further to be observed that, if actual loss does result from misconduct or want of proper care and skill on the part of the salvors, it by no means follows that the Court will deduct the full amount of that loss in calculating the salvage reward. In *The Cape Packet*, a case in which it was held by Dr. Lushington, that there was such negligence of the salvors as to affect the reward, he stated the principle upon which the deduction should be calculated in the following terms:—"There is also another kind of negligence, the effect of which is to diminish the amount of salvage reward, not to take it away entirely. The extent of this diminution, I may further state, is not measured by the amount of loss or injury sustained, but is framed upon the principle of proportioning the diminution to the degree of negligence, not to the consequences" (d). The learned judge expressed himself to the like effect in the later case of *The Perla* (e), which has been already referred to. How-

When either misconduct or unskillfulness causes actual damage, the Court will not, necessarily, reduce the award to the full extent of the damage.

But there are cases in

(b) 1 Hagg. 157, n. "Adequate rewards encourage the tendering and acceptance of salvage services; exorbitant demands discourage their acceptance, and tend to augment the risk, the loss of vessels in distress. Masters determine to encounter peril rather than expose their owners to demands so unjustifiable and so large as that made in this case." Dr. Lushington, *The Nimrod*, 14 Jur. 942, at p. 944. The claim in that case was 8,000*l.*, bail was taken for 6,000*l.*, and

the award was 600*l.* In *The George Gordon* (9 P. D. 46), where the salvors arrested the salvaged ship for a claim of 3,000*l.*, Butt, J., on a value of 14,000*l.*, awarded them 450*l.*, and ordered the salvors to pay all the costs and expenses of finding bail for 3,000*l.*, as an exorbitant claim. And see, for a recent instance, *The Marguerite Molinos*, (1903) P. 160.

(c) 7 P. D. 203, at p. 205.

(d) 3 W. Rob. 122, at p. 125.

(e) Swab. 230, at pp. 231, 232.



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which the salvors have been made liable for the full amount.

ever, in the more recent cases of *The Thetis* (f), and *The C. S. Butler* (g), decided by Sir Robert Phillimore, and *The Dwina* (h), decided by Sir Charles Butt, full compensation in damages, for the loss of the vessel by collision in the first case, and for injury to the vessel by collision in the second and third cases, was decreed against those who had been trying to render salvage services when their negligence caused the mischief.

The value of the property employed in the salvage service :

Is an element, when taken in connection with the danger to which the property is exposed ; Is important in the case of salvage performed by large and costly vessels.

The value of the property used in the performance of the salvage service, and the danger to which that property is thereby exposed, are elements in the character of the salvage claim which can scarcely be considered except in connection with each other. Speaking of the value of the *Venetian*, the salving ship, in *The Werra* (i), Sir James Hannen observed :—"Her value is to be taken into consideration, though it does not largely increase the amount of the reward, and that only so far as it exposes the owner of the salving ship to risk of greater loss." Where, as, for example, in *The Werra*, and in the earlier case of *The City of Chester* (k), the salving vessel is a large and valuable steamer, fitted with complex and costly machinery, her value and the risk of its loss or of its serious depreciation (l) —a risk which the mere towage of a disabled vessel, of any considerable weight, in bad weather, must necessarily involve—are obviously matters which deserve recognition in the assessment of salvage reward, not only in justice to the owner of the salving vessel in the particular case, but also in the public interest, and in order that the owners of such vessels may be encouraged to permit them to render salvage services. "Another circumstance," said Lindley, L. J., in the last-mentioned case, "to be considered, is the importance of so remunerating salvors as to make it worth their while to succour ships in distress. . . . The salving vessel is often herself exposed to imminent peril, the risk of loss or damage to her is often very great. . . . Hence one element in determining the amount to be awarded

(f) L. R. 2 A. & E. 365.

(g) L. R. 4 A. & E. 178 ; more fully 2 Asp. M. L. C. 237.

(h) (1892) P. 58.

(i) 12 P. D. 52, at p. 54. And see per Lord Esher, M. R., *The Lindfeld*

(1894), 10 Times L. R. 606 ; Board of Trade Instructions, 1895, Art. 173 (d).  
(k) 9 P. D. 182.

(l) See, for an instance of such depreciation, *The De Bay*, 8 App. Cas. 559.

for salvage services is the value of the salving ship and cargo, Chapter VI. which have been exposed to risk; and the nature and extent of the risk are other elements for consideration. When the salving vessel is, as in the present case, a large and valuable steamer, exposed to great risk, the claims of her owner deserve very favourable attention. . . . Unless, where the salving vessel is a valuable steamer, the remuneration awarded to her owner is sufficient to cover this risk, owners of such vessels will naturally discourage their employment in salvage services; a result which would be very disastrous, and which the Court should do what it can to prevent. In order to avoid such a consequence as this, it is necessary that the amount of compensation awarded to the owner of the salving ship shall, wherever practicable, be sufficient to cover the risk of damage and loss which he ran, where fortunately none has been sustained." The importance of these considerations is attested by Butt, J., in his judgment in *The Benlarig (m)*, where he says: "I think it would be very unfortunate in any way to discourage steamers from rendering assistance to vessels in distress. In this, as in some recent cases, I am sorry to see a decreasing tendency to aid vessels that are broken down."

It is, however, only where it is very great, that the value of the salving ship has an important bearing upon the amount of the reward. It is never the measure or, like the value of the salvaged property (n), the limit of the reward. The trifling character of the salvor's property does not necessarily detract from the value which the Court sets upon the service; and it never can be an argument against the amount to be awarded to the salvors, that it exceeds the value of the property put in peril in performing the services (o).

But when the value of the salvor's property is small, that fact has little bearing on the amount of the reward.

The value of the cargo on board the salving ship is material only as it affects the degree of risk and responsibility which the salvor incurs in rendering the salvage service—elements of merit which will be considered later in this chapter.

If the salvage service is dangerous, or involves the continued exercise of skill or labour, the length of its duration will, of

Time occupied by the salvage service.

(m) 14 P. D. 3, at p. 6.

(n) See, per Lindley, L. J., *The City of Chester*, 9 P. D. 182, at p. 202.

(o) The judgment of the Privy Council, *The Fusilier*, Br. & L. 341, at p. 350.

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Is not, in itself, a very material element in the assessment of the reward.

course, enhance the salvor's reward. But a service may be brief, and yet, from the urgency of the occasion or the great risk of the salvors, it may earn a substantial award. In *The Thomas Fielden* (p), which has been referred to in an earlier portion of this chapter, and which was a case of salvage service involving danger to life, but lasting only a short time, Dr. Lushington, after adverting to the high value to be placed on salvage services where human life is in peril, added that "the time is of no consequence." And in *The Andalusia* (q), the same learned judge held that, where salvage services are rendered by steamships, the amount of salvage which the Court will award is not necessarily affected by the fact of the service performed occupying only a short time, inasmuch as it was better that the service should occupy a short space of time than the length of time it used to occupy from the delay which arose to enable sailing ships to make the manœuvres necessary to perform the service. "I am at a loss to conceive," said Dr. Lushington, in a case where the little space of time occupied was unsuccessfully urged in support of a small tender (r), "why a patient should complain of the shortness of an operation."

But is to be compensated for in the award, in so far as it occasions loss or expense to salvors.

If the service, though protracted, does not contain any important element of risk or skill on the part of the salvors, as e.g., a long but easy towage of a dismantled ship by a powerful steamer in favourable weather, the time occupied appears to deserve consideration in the award, chiefly if and so far as it causes an actual expense or loss of profit to the salvors—grounds of claim for an enhanced award which will be noticed presently—rather than as constituting in itself an element of meritorious service.

Where a vessel goes out in consequence of a signal to render assistance to a ship in distress, the time and expense in going out ought to be considered in the calculation of the reward (s).

Labour.  
If unaccompanied by

The labour is, of course, an element in salvage service which is to be recognised in the award; but if it is not enhanced by

(p) 32 L. J. Adm. 61, at p. 62.

(q) 12 L. T. (N. S.) 584.

(r) *The General Palmer* (July 5, 1844), reported in a note to *The Medora* (*The Caledonian S.S. Co. v. Hutton*), 5 Notes

of Cases, 156, at p. 159. And see *The Strathgarry*, (1895) P. 264, at p. 270.

(s) *The Graces*, 2 W. Rob. 294, at p. 301.

the exhibition of scientific or nautical skill (*t*), or by the accompaniment of responsibility or danger, and derives its title to rank in the category of salvage services only from the perilous condition or position of the property to which it is applied, it forms at once the lowest and the most easily assessable of the elements to be considered in the calculation of salvage remuneration. The ship's agent, for example, who superintends salvage operations which consist in the mere discharge, landing, and safe custody of the cargo of a stranded ship, if he is entitled to salvage at all, is entitled only to a very moderate reward (*u*), and those who may volunteer to assist him by purely manual labour would receive a still smaller one. Similarly, as will be seen, when the question of apportionment is hereafter (*x*) considered, the sailor ordinarily receives less than the officer of the salving ship.

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risk or skill or responsibility, labour is the lowest and most easily assessable element.

Just as danger to the property used in effecting a salvage service is considered, according to its degree, in the assessment of the reward, whether damage to the property has, or has not, in fact resulted, so, also, is the hazard or responsibility which the salvor incurs in regard either to pecuniary interests affecting his own property, or to his obligations of contract or duty to other persons, although fortunately the hazard, or the responsibility, has not eventuated in an actual loss to him.

Risks and responsibilities (other than of injury to property employed in the service) incurred by the salvor.

Not the least important of these hazards or responsibilities are those which the salvage services may involve with regard to the shipowner's insurances upon ship or freight, or his engagements with the owners of the cargo on board his ship.

Risk, through deviation, to insurance and to claims by owners of cargo on board salving ship.

A deviation which is for the sole purpose of saving life at sea, or which is reasonably necessary in order to ascertain if the state of a vessel in distress is such as to involve danger to the lives of those on board of her, causes neither a forfeiture of the policy of insurance upon the salving ship, nor a liability to the owners of goods laden on board of her in respect of any loss which,

Deviation to save life does not involve the risk.

(*t*) As to the contrast between ordinary labour and labour involving nautical skill, see *The Duke of Clarence*, 1 W. Rob. 346.

*The Purissima Concepcion*, 3 W. Rob. 181; and Chap. IV. pp. 108—110, above.

(*u*) See *The Watt*, 2 W. Rob. 70;

(*x*) Chap. VII. pp. 174—178.

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apart from any question of deviation, would be covered by the exceptions contained in the bill of lading under which the goods are carried. "Goods owners and insurers," said Cockburn, C. J., in delivering the judgment of the Court of Appeal (Cockburn, C. J., and Brett and Cotton, L. JJ.), in *Scaramanga v. Stamp (y)*, "must be taken, at all events in the absence of any stipulation to the contrary, as acquiescing in the universal practice of the mercantile world, prompted as it is by the inherent instinct of human nature, and founded on the common interest of all who are exposed to the perils of the seas."

But deviation  
to save pro-  
perty does.

But the shipowner is not similarly protected in respect of a deviation made only in order to save property. Unless, as is often the case (z), his insurance policies, and his contracts for the carriage of the cargo, contain express provisions giving his ship liberty to deviate for salvage purposes, or to tow and assist vessels in all situations, the owner of a ship, which deviates from her voyage in order to save property in peril, is put to hazard of more or less serious loss from the forfeiture of his policies of insurance, and his exposure to claims of owners of cargo for all subsequent damage. The question of his liability was finally settled by the case of *Scaramanga v. Stamp*, referred to above, which was decided in the year 1880, and placed beyond doubt the right of the owner of the salving vessel to have the risk of loss through deviation considered in the assessment of the salvage reward. Many years before, and whilst the point was still undecided, judgments both of the Court of Admiralty and of the Privy Council had repeatedly affirmed the right of the salvor, where the salvage service had involved a deviation, to have the risk of the forfeiture of insurance, and of liability to his freighters, considered in the salvage award (a); and in the case of *The Farnley Hall* (b), decided after the date of

(y) 5 C. P. D. 295, at p. 305.

(z) See *The Thetis*, L. R. 2 A. & E. 365, at pp. 368, 369; *The Silesia*, 5 P. D. 177, at p. 184.

(a) *The Waterloo*, 2 Dods. 433, at p. 443; *The Arabian*, 7 Feb. 1853, Pritch. Adm. Dig. 3rd ed. (1887), vol. 2, p. 1888; *The Scindia*, L. R. 1 P. C. 241, at pp. 246, 247; *Papa-*

*yanni v. Hoquard*, *The True Blue*, *ibid.* 250, at p. 255; *Carmichael v. Brodie*, *The Sir Ralph Abercrombie*, *ibid.* 454, at p. 461. A different view seems to have been expressed by Dr. Lushington in *The Deveron*, 1 W. Rob. 180, at p. 182, and *The Orbona*, 1 Spinks, E. & A. 161, at p. 166.

(b) 4 Asp. M. L. C. 499.

*Scaramanga v. Stamp*, one of the grounds on which the Court of Appeal increased the award of the Court of Admiralty was that the element of risk through deviation did not appear to have been sufficiently regarded in the assessment of it. In *The Edenmore (c)*, the Court held that an extra premium paid by the salvors to their underwriters to waive a breach of warranty in taking the salvaged ship into a port prohibited by their policy, was an element for consideration in assessing the award. Similarly in *The Empress (d)*, the fact that the policy of insurance of the salving vessel gave no liberty to tow was taken into account by the Court in its estimate of the award. And where, at the time of salvage services, the salving vessel was under a government charter which gave no liberty to deviate for salvage, the risk incurred by the owners and the responsibility which the master took upon himself in the performance of the services, received recognition in the award decreed by the Court (e).

It is not only in assessing the shipowner's claim to salvage that the Court of Admiralty regards this risk. The responsibility towards his owner in regard to policies on ship and freight, and the contracts of carriage, which the master of a ship assumes when he authorizes the deviation of his ship, in order to save a stranger's property, receives similar recognition (f). In his judgment in *The Aletheia (g)*, where 250*l.* was awarded to the master of the salving vessel, Dr. Lushington remarked, in reference to the claim: "It was further to be considered that the master of the salving vessel had taken upon himself the responsibility of deviating from his course for the purpose of rendering the services, and thereby perilled the insurance on his vessel."

The Court considers such risk and responsibility as enhancing the right to a liberal reward in the case of the captain as well as to owner of the salving ship.

(c) (1893) P. 79.

(d) Shipp. Gaz. Jan. 21st, 1893.

(e) *The Folio*, Shipp. Gaz. Weekly Summary, May 10th, 1901.

(f) See, for example, *The Folio* (*ubi sup.*). In *The Thetis*, L. R. 2 A. & E. 365, Sir R. Phillimore was prepared to hold that a master had a general authority to assist vessels in

distress. But *qu.*, since the decision in *Scaramanga v. Stamp* (*ubi sup.*), as to saving of property alone. See for disapproval of the master risking his owner's interests, per Betts, J., *The Waterloo* (1830), Blatch. & Howl. (Amer.) 114, at pp. 131—135.

(g) 13 W. R. 279. Cf. also *The Andalusia*, 12 L. T. (N. S.) 534, at p. 585.

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Other risks and responsibilities which the Court considers in the award.

There are other risks through detention or deviation, which the Court will consider in the assessment of the salvage reward, besides those of the forfeiture of insurance or liability to freighters.

If the salving vessel is, at the time of the service, engaged in the carriage of passengers or mails, there is a peculiar responsibility involved in delay, which receives favourable attention in the assessment of the claims both of her owner and of her master. In *The Martin Luther* (h) the services had been performed by the P. & O. steamship *Tagus* when carrying the homeward mails and a number of passengers from Gibraltar to Southampton. In the course of his judgment Dr. Lushington said (i): "I need hardly say that when a ship, in this peculiar occupation, is induced to incur any delay in bringing her Majesty's mails, and landing her passengers at their destination, she ought not to do so unless the necessity is so imminent as to require such services; because it is of the greatest importance to the public to land the mails with the greatest expedition, and it is due to the passengers that they should not be needlessly delayed in the prosecution of the voyage. . . . A master who commands a ship like the *Tagus* incurs very great responsibility when he takes upon himself to employ his ship—laden with passengers and mails—in any other service than that in which she is engaged. . . . I shall give 400*l.* to the master, for I think that the master, on all these occasions, is a person that ought to be greatly encouraged; because it is upon him that entirely rests the whole responsibility of employing the ship. He has no right to deviate from the usual employment of his ship, except in strong cases of urgent necessity; and, if he deviates from that employment without sufficient cause, he is liable, and most justly liable, to be severely blamed" (k).

In *The Ewell Grove*, where the salvage service had been rendered by H. M. S. *Rhadamanthus*, Sir John Nicholl in his judgment lays great stress, as to the deserts of her commander, upon the responsibility which he undertook in delaying his ship in order to perform the salvage service (l). "In effecting this

(h) Swab. 287.

(i) *Ibid.* at p. 289.

(k) For instances of penalties actually incurred by salvors in respect of

the carriage of mails, see *The Sillesia*, 5 P. D. 177; *The Ionic*, Shipp. Gaz. Weekly Summary, July 28th, 1893.

(l) 3 Hagg. 209, at pp. 225, 226

service there was no great personal risk, but there was some. . . . But there was considerable risk of another sort, the risk of responsibility. The steam vessel was on a service requiring despatch; she was under positive orders to return by a certain time, and it was not till after much consideration and doubt that Captain Evans takes upon himself the responsibility, and sends an excuse to the commodore. But if any untoward accident had happened, this conduct might have deeply involved the captain and perhaps also his officers; and I think, therefore, that the incurring such a responsibility was equal to a personal risk of life; but, however that may be, it forms a strong feature in this case."

By the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 510, salvage is made to include "all expenses properly incurred by the salvor in the performance of the salvage services." This section merely reproduces a similar provision contained in sect. 458 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104); and long before the passing of the latter statute the Court had been in the habit of adding to the reward given for the salvage services themselves some allowance, which it generally assessed separately, for such expenses. In recent years, owing, probably, in part, to the greatly increased size and value of ocean steamers, and the largeness of the claims of compensation for losses and damages of one kind or another, which have been sometimes put forward in connection with salvage services by the owners of such steamers, there has been considerable controversy as to the point to which the salvor's right of indemnity properly extends (for obviously it cannot be unlimited (*m*)), and further as to the admission of evidence to prove in detail the items of his alleged loss and damage.

Of the salvor's right to compensation for damage, expenses and loss of earnings or profits by the performance of the salvage service.

The law of the matter has been practically settled, if the word settlement can be applied to decisions which relegate much to the discretion of the Court in each case, by three modern judgments:

The law as now settled by modern decisions.

Cf. also, on the meritorious element of responsibility in respect to the employment in salvage of ships and men of the Royal Navy, the judgment of the Privy Council as to the merits of

Admiral Baker, in *The Thetis*, 2 Knapp, 390, at p. 409.

(*m*) See per Baggallay, L. J., *The City of Chester*, 9 P. D. 182, at p. 199; and per Lindley, L. J., *ibid.* pp. 203, 204.



Chapter VI. the judgments of Sir James Hannen in *The Sunnyside* (n), and of the Judicial Committee of the Privy Council (Sir Barnes Peacock, Sir Richard P. Collier, Sir James Hannen, Sir Richard Couch, and Sir Arthur Hobhouse) in *The De Bay* (o), both of which were given in 1883, and the judgment—or rather judgments, for the members of the Court, while concurring in the decision, delivered their views separately—of the Court of Appeal (Brett, M. R., and Baggallay and Lindley, L.JJ.) in *The City of Chester* (p), in 1884.

The effect of these judgments, fairly read together, appears to be as follows:—Whilst the amounts of damage, expense, or loss of profits, ought not under ordinary circumstances to be taken as “fixed figures,” or “moneys numbered,” to be added to the amount of the reward for actual salvage services (q), the fact that such damage, expense, or loss has been caused by the performance of the salvage service, is a fact which the Court ought never to disregard in assessing the amount of the reward. But all the circumstances, of which this is only one, must be considered together, and it does not follow, necessarily, that because the salvor proves such damages, expenses, or losses, the Court should fix the sum awarded high enough to cover them. On the contrary, the salvage service may itself be so trivial as to make it unjust, or the property salvaged may be of so small a value as to make it impossible (r) to cast the burden of such an

(n) 8 P. D. 137.

(o) 8 App. Cas. 559.

(p) 9 P. D. 182.

(q) In *The William Symington*, where salvage services had been rendered by the s.s. *Flaminian*, and thereby her crank pin had been cracked in two places, Sir J. Hannen, in the course of his judgment, made the following remarks:—“The serious question which has been introduced is with regard to the crank. The general observation applicable to that part of the case is this: although of late years the particulars of losses of this kind have been gone into more minutely than was formerly the custom in the Admiralty Court, yet it must not be taken that the giving proof of particular loss is to be added as an exact figure in a case; for if

it is to be taken as an exact figure, then the calculations in salvage cases would have to be treated in a totally different manner, and very much smaller sums would be given on the average than now are given. In particular cases the expenses, if gone into, might amount to a very large sum, but the average of salvage amounts would have to be considerably reduced if the items of expenses were gone into with exactness as the basis of calculation. Owners of salving vessels have a liberal allowance made to them in consideration of the risks which they run, of which the injury to the crank is an illustration.” *Shipp. Gaz. Weekly Summary*, May 23rd, 1890.

(r) See, for an example of such a case, *The Erato*, 13 P. D. 163, in

indemnity upon the owner of the salvaged property; and, if the Court sees that this is the case, it may properly refuse to receive evidence, either before itself, or by means of a reference to the registrar and merchants, as to the particulars of damage, expenditure, or loss of earnings or profits incurred by the salvor. Where, however, meritorious salvage services have occasioned to the salvors serious pecuniary loss, and where the value of the property saved is ample not only to defray loss sustained by a salvor, in addition to an adequate sum for salvage proper, but also to leave a substantial surplus for the owner of the property saved, the salvor should be remunerated with a sum sufficient both to reward him for his risk, labour, skill, and conduct, and also to cover damages, expenses, and losses incurred through rendering the service(s); and evidence of such damages, expenses, and losses, ought to be received by the judge, either in Court or through the registrar and merchants on a reference, so that they may be ascertained with precision. If the Court gives the amount of the alleged damages, expenses, and losses specifically, it must take care not to give the amount twice over by again considering them when it comes to fix the amount due for salvage remuneration proper, that is, the remuneration for risk, labour, &c., in the service (t).

Where evidence of the salvor's losses and expenses has to be taken, it is now usually taken before the Court itself, and the greater cost of a reference to the registrar and merchants is thus saved to the parties (u). The procedure, however, in this respect is necessarily dependent, in great measure, upon the degree of scrutiny which the case requires. In *The City of Chester* (x), Butt, J., refused either himself to receive evidence which was tendered by the salvors in order to prove, in detail, injuries to the salving vessel, the cost of repairs, and loss through

As to the taking of the evidence before the Court itself, or before the registrar and merchants.

which the repairs of the damages incurred in the salvage service by one alone out of several sets of salvors cost 4,700*l.*, and the total value of salvaged property in Court was 3,750*l.*

(s) For examples, see *The Jupiter*, Shipp. Gaz. Weekly Summary, Aug. 9th, 1901, where the salvors' losses and expenses amounted to 2,157*l.*,

and on a value of 54,900*l.* an award of 9,550*l.* was given, of which 7,500*l.* was apportioned to the owners. *The Baku Standard*, (1901) A. C. 549.

(t) See on this *The De Bay*, 8 App. Cas. 557, at p. 566.

(u) Williams & Bruce, Adm. Pr. 3rd ed. p. 154, n. (d).

(x) 9 P. D. 132.

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*The City of  
Chester.*

her detention during repairs, or to direct a reference to the registrar and merchants to ascertain the amount of these losses and expenses. In the result he decreed as salvage 6,500*l.*, of which he apportioned 4,000*l.* to the owners of the salving vessel. On appeal, the Court of Appeal (Brett, M. R., Baggallay and Lindley, L. JJ.) varied the decree by awarding the salvors 1,000*l.* as salvage proper, and referring the claims for losses and expenses to the registrar and merchants, unless the salvors should elect to accept the award of the Court of Admiralty (*y*).

The items of the salvors' claim are not to be discussed in the same detail as in an action for work and labour done.

In cases in which the judge of the Admiralty Court admits evidence of expenses incurred by the salvors, it is neither usual nor proper to pursue that detailed examination of them which would be legitimate enough in a common law action for work and labour done. "I must remind the learned counsel," said Sir James Hannen in the case of *The Pinnas* (*s*), "that, though it has been held that the items of expenditure by salvors may be given in evidence, they are not to be the subjects of discussion in the same way as if it were an action for work and labour done. They may be dealt with generally by the Court, but this case has been fought as if the claim were for work and labour done, which is not the case."

The award is usually an award in gross.

In regard to the form of the award itself, the more common course now is to award a gross sum generally, covering both the salvage remuneration pure and simple and also any allowance which the Court may make for losses or expenses of the salvors (*a*), and not, as was often done formerly (*b*), to distinguish in the award between the different heads of award. But cases may always arise in which it is desirable and proper, in the interests of justice, to make a separate assessment. One such case is where the owner of the salving ship has suffered loss of profit or has had to pay for repairs to the salving ship, and it is possible that after the award an apportionment between the owners of the salving ship and the master and crew may be

But in some cases a separation and distinction in the award in respect of the salvor's damages, or loss of profits, is required.

(*y*) The appellants did so elect.

example, *The Andrina*, L. R. 3 A. & E. 286.

(*z*) 6 Asp. M. L. C. 313, at p. 315.

(*a*) Williams & Bruce, Adm. Pr. 3rd ed. p. 154, n. (*d*). See, for an

(*b*) *The Oscar*, 2 Hagg. 257; *The Salacia*, *ibid.* 262; *The Jane*, *ibid.* 344; *The Saratoga*, Lush. 318.

required to be made. There, unless the Court's allowance to the owner for the damage and loss of profits is separately awarded, there will be a danger of part of that which was intended to recoup the owner for the damage and the loss of profits going to the master and crew, who have no title to any share in it (c).

Or, again, there may be, as there was in the case of *The Sunnyside* (d), an antecedent agreement between the different salvors to share the salvage reward in certain proportions, and it would be obviously unjust that, at the expense of one salvor whose ship has been injured in the performance of the salvage service, his co-salvors should, by reason of an award in gross, derive a benefit from the award being enhanced by an allowance for the loss which he had sustained.

Lastly, although it does not appear yet to have received adequate attention, there is in some cases another and, it is submitted, a still stronger reason why the amount of the compensation which it is intended to allow the owner of the salving ship for expenses should be separately and specifically stated by the Court in making the award, viz., justice to the underwriters on ship. Where—as, for example, is reported to have occurred in the case of *The Erato* (e), in regard to one of the salvors, the s.s. *Pheasant*—underwriters on the salving ship have paid the shipowner the cost of the repairs rendered necessary by the salvage service, they ought to be enabled to recover over from him any amount which the Court may award him in respect of the cost of such repairs (f). But, unless this sum is ear-marked as a distinct item of the award, the means of recovery are denied them, and the shipowner may, in the result, be recouped twice over for the same expenditure. The fact that the owner of the

(c) *The City of Chester*, 9 P. D. 182, at p. 204; *The Saltburn* (1894), 7 Asp. M. L. C. 474; *The James Brand*, Shipp. Gaz. Weekly Summary, July 17th, 1903.

(d) 8 P. D. 143. In this case one of the salvors had agreed beforehand to pay over to another one-third of the salvage reward decreed to him. He had claims, which the Court assessed at 100*l.*, for loss of profits and for repairs. To prevent the obvious in-

justice of one-third of this compensation being paid over to the other salvor under the bargain, Sir J. Hannen awarded separately the 100*l.* for loss of profits and for repairs, and the 200*l.* found due to the same salvor for salvage reward pure and simple. And see *The Wilhelm Tell*, (1892) P. 337.

(e) 13 P. D. 163.

(f) *Castellain v. Preston* (C. A.), 11 Q. B. D. 380.

Chapter VI. salving ship has been indemnified by the underwriters for the cost of repairs to his ship, was held by Butt, J., in *The Erato* (g) to be not a matter of which the Court could take notice in assessing the salvage award.

How out-  
standing  
claims by  
cargo-owners  
may be dealt  
with.

It sometimes happens that at the time of the hearing of a salvage action there are, outstanding against the salvor, claims by owners of cargo on board the salving vessel arising out of the performance of the salvage services. In such a case the Court may make an award leaving the cargo-owners' claims out of consideration, but giving liberty to the salvor to apply to have the award increased in the event of any of the claims being established (h).

For what  
expenses the  
Court may  
indemnify the  
salvor.

The only expenses for which the Court of Admiralty may compensate the salvor in the award are: (1) expenses properly incurred by the salvor in the furtherance of the salvage service, and before the vessel assisted has been placed in a position of safety (i); and (2) expenses directly occasioned by the performance of the salvage service, as, e.g., the cost of repairing damage which, without any fault on the part of her officers or crew, has been caused to the salving vessel (including, of course, her boats, furniture and tackle), or of replacing damaged clothing (k).

The Court  
watches  
narrowly all  
such claims.

Claims under the first head of expense are closely scrutinized by the Court, and must be strictly proved. Speaking of such claims, in *The Pinnas* (l), Sir James Hannen observed: "In

(g) 13 P. D. 163, at p. 166.

(h) *The Gulf of Ancud*, Shipp. Gaz. Weekly Summary, May 6th, 1904, following *The Easby Abbey*, Shipp. Gaz., May 26th, 1900.

(i) Cf. per Sir J. Hannen, *The Pinnas*, 6 Asp. M. L. C. 313, at p. 314. In *The Le Jonet*, L. R. 3 A. & E. 556, Sir R. Phillimore allowed a sum of 108l. 10s. for expenses in hiring men to pump the salvaged ship, and in other like things, all of which were incurred after she had been brought into port and even after she had been arrested; but he decreed the payment expressly "independently of salvage." In *The Rainger*, 2 Hagg. 42, Lord Stowell appears to have refused to allow in the

salvage reward the cost of repairs for which the salvors had made themselves liable, although the repairs had been executed for the purpose of getting the vessel safely into harbour from the place of stranding. For an example of the allowance in the salvage award of expenses incurred by the salvors for the safety of the vessel in peril, see *The Andrina*, L. R. 3 A. & E. 286.

(k) For examples, see *The Salacia*, 2 Hagg. 262; *The Saratoga*, Lush. 318; *The Rosalie*, 1 Spks. E. & A. 188, at p. 192; *The James Armstrong*, 3 Asp. M. L. C. 46; *The Sunnyside*, 8 P. D. 137; *The De Bay*, 8 App. Cas. 559; *The Madras*, (1898) P. 90; *The Baku Standard*, (1901) A. C. 549.

(l) 6 Asp. M. L. C. 313, at p. 315.

order to render those [the salvage] services considerable expense, no doubt, had to be gone to, but the means adopted were of the most incautious kind, such as no reasonable man would have had recourse to if he had only his own interests at heart. But this was treated, as I am afraid salvage cases very frequently are, as an opportunity of extracting as much money as possible from the pockets of the owners and underwriters."

As to claims under the second head of expense above mentioned, and also as to damages for detention during repairs, it is to be noticed that, if the repairs are rendered necessary by an injury suffered by the salving ship in the course of the salvage service, the Court presumes, in favour of the salvors, in absence of proof to the contrary, that the injury was due not to any fault or negligence on their part, but to the necessities of the salvage service (m). But no allowance will be made for the cost of repairs, or for detention during repairs, or for any other loss, if the injury is not the proximate result of the service. A good example of an injury, which would be deemed too remote, is afforded by the American case of *The Cornelius Grinnell* (n), decided by the United States District Court of Admiralty, Southern District of New York, in the year 1864. There the salving steamer had been delayed about five hours in the prosecution of her voyage by the performance of the salvage service. In consequence of this delay she arrived, about low-water, at a dangerous place which, but for the delay, she would probably have reached about high-water, and have passed in safety. As it was, she struck upon a rock there, and was seriously injured. Shipman, J., rejected the claim of the owners in the salvage suit for compensation for the cost of repairs, and for detention during the repairs, and made the following observations in his judgment upon the point: "In a certain popular and remote sense when she undertook to get the *Grinnell* out of danger at Five Fathoms Bank, she incurred whatever risks such a delay might subject her to. She took the risk of encountering another storm, which she might escape if she avoided delay. Whatever increased dangers might arise during the time for which her detention in the 'salving' service at Five Fathoms Bank might prolong her voyage were all in

Injury to the salving ship is presumed to have been caused by the necessities of the salvage service.

But it must be the direct and proximate result of the service.

(m) *The Thomas Blyth*, Lush. 16; *The Baku Standard*, (1901) A. C. 549.

(n) 2 M. L. Cas. 140.

Chapter VI. one sense hazarded by her staying by the *Grinnell*. But these remote and uncertain dangers do not, in the eye of the law, increase her merit, and thus increase her reward. Though she had been totally wrecked by another gale which she would have wholly escaped but for her delay of five hours in this service, I apprehend that such a disaster would not be allowed to enhance the salvage compensation. And such dangers were contingent, and damages which might result from them must be considered, in the language of the law, as remote, having no logical or legal connection with the transaction on which the libel is founded."

**Damages.** If, in consequence of the damage sustained by a salving ship, she suffers a general depreciation in value, her owners are entitled to have such depreciation considered in the salvage award, over and above the cost of repairing the visible damage (o).

**For penalties.** In *The Silesia* (p), Sir Robert Phillimore specifically awarded to the owners of the salving steamer compensation for penalties incurred under a mail contract through the deviation required by the salvage service.

**For loss of earnings and profits.** There are several instances in the reports of compensation being awarded for loss of earnings and profits in the case of fishing vessels. In *The Salacia* (q), Sir Christopher Robinson awarded to an American sealing vessel compensation for the loss of the sealing season. In *The Sunnyside*, Sir James Hannen awarded 100% compensation for loss of profits and repairs to the steam trawler *Monarch*, one of the salving vessels (r).

**Instances of compensation for loss of profits in case** But the allowance in the salvage award for such losses is by no means confined to the case of fishing vessels. In *The Gladiator* (s), the award of salvage to the owners of the salving

(o) *The De Bay*, 8 App. Cas. 559.

(p) 6 P. D. 177. See also *The Ionic*, Shipp. Gaz. Weekly Summary, July 28th, 1893.

(q) 2 Hagg. 270. Cf. also *The Louisa*, 3 W. Rob. 99, at p. 100; and for recent examples, *The Conger*, Shipp. Gaz. Weekly Summary, May 22nd, 1903; *The Annandale*, *ibid.* March 24th, 1905; *The Allie*, *ibid.* Dec. 22nd, 1905. In *The Nicolai Heinrich*, 17

Jur. 329, Dr. Lushington pointed out that the principle of taking into account the loss which fishing vessels had sustained by deserting their occupations to render salvage services must not be carried too far.

(r) 8 P. D. 137.

(s) Report of the Registrar and Merchants, 7th May, 1864, quoted and set out in Williams and Bruce, *Adm. Pr.* 3rd ed., p. 154, n. (f).

steamer included, besides compensation for expenses in connection with repairs and demurrage, an allowance for loss of freight due to her being prevented from sailing on the day fixed and advertised as her sailing date. In *The De Bay* (t), on appeal from the Vice-Admiralty Court of Malta, the Judicial Committee of the Privy Council held that an allowance given by the Court below for the loss of a profitable charter-party was right in point of principle, but that the salvors had failed to prove such a loss. In *The G. R. Booth* (u), where the salvaging vessel lost nine days before reaching her destination, and in consequence a vessel belonging to the same owner, which was to take part of her cargo on to its final destination, was delayed, the loss incurred thereby was taken into account in assessment of the award.

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of other than  
fishing  
vessels.

It was established in *The De Bay* (referred to above) that salvors are not entitled to any allowance for interest on the amount of loss or damage.

No allowance  
in respect of  
interest.

There is one other consideration affecting the estimate of the award which deserves to be noticed here. If salvors in the performance of successful services have acted under an agreement which entitled them to some remuneration independently of success, the Court will take this fact into consideration as an element reducing the amount of the award (v). In *The Lepanto* Sir Francis Jeune said that one of the consequences of such an agreement is that "the remuneration cannot be considered at all on the salvage scale, because one of the main reasons why salvage remuneration is so high is that unless the vessel is saved no remuneration is payable at all" (x). The justice of the rule is clear. But it is very difficult to say what precise effect the existence of such an agreement ought to have in reducing the award: the risk to the salvors remains the same, whether they are paid for their services or receive remuneration by means of a salvage award (y).

An agreement  
for payment  
of reward  
independently  
of success  
operates to  
reduce the  
award.

(t) 8 App. Cas. 559. And see *The Edenmore*, (1893) P. 79; *The Jupiter*, Shipp. Gaz. Weekly Summary, Aug. 9th, 1901; *The Bremen* (1906), 10 Asp. M. L. C. 229.

(u) Shipp. Gaz. Dec. 22nd, 1892.

(v) *The Lepanto*, (1892) P. 122; *The Kate B. Jones*, (1892) P. 366; *The Edenmore*, (1893) P. 79.

(x) (1892) P. 122, at p. 130.

(y) See per Barnes, J., *The Edenmore*, *ubi sup.* at p. 83.



**Chapter VI.** The consideration of the law as to salvage awards scarcely seems complete without a reference to the treatment by the appellate tribunals of appeals respecting the amount awarded by the Court of first instance.

**Of appeals as to amount of salvage award.**

The principles which have been maintained both by the Privy Council and by the Court of Appeal in dealing with such appeals have been clearly and concisely stated by Lord Esher, M. R., in delivering his judgment (in which Lindley and Lopes, L. JJ., concurred) in *The Star of Persia* (s) (1889):—

The rule stated by Lord Esher in *The Star of Persia*.

“The rule has been correctly stated by Mr. Bucknill that if this Court cannot say that the learned judge has misapprehended the facts, and cannot say that he has acted contrary to any principle, then, if the amount does not seem to be unreasonable, it cannot interfere.”

Instances of alteration in the award where the Court below has either erred in principle, or has misapprehended the facts.

*The Amérique.*

Modern instances of the alteration on appeal of the awards of Admiralty Courts of first instance on the ground of misapprehension of facts or error in principle are to be found in the cases of *The Amérique* (a), *The Farnley Hall* (b), *The Star of Persia* (c), *The De Bay* (d), and *The Accomac* (e).

In *The Amérique*, the Privy Council reduced a salvage award of 30,000*l.* to 18,000*l.*; holding that the Court of Admiralty had given undue weight to the value of the property, which was very large, as an element in the assessment.

*The Farnley Hall.*

In *The Farnley Hall*, the Court of Appeal increased the award of 600*l.*, made by the Court of Admiralty, to 900*l.*, upon the grounds that the Court below had insufficiently rewarded the crew, whose lives had been placed in some peril, and also had not considered, as it ought, the fact that the exigency of the service had necessitated a deviation on the part of the salving vessel which exposed her owners to risk of loss in respect of liabilities to the owners of the cargo on board of her.

*The Star of Persia.*

In *The Star of Persia*, the Court of Appeal increased the award of 150*l.*, made by the Court of Admiralty, to 300*l.*;

(s) 6 Asp. M. L. C. 220, at p. 221.

(a) L. R. 6 P. C. 468.

(b) 4 Asp. M. L. C. 499.

(c) 6 Asp. M. L. C. 220.

(d) 8 App. Cas. 559.

(e) (1891) P. 349.

holding that the Court below had considerably misapprehended and underrated the element of danger in the position of the salvaged vessel.

In *The De Bay*, on appeal from the Vice-Admiralty Court of Malta, the Privy Council reduced the amount of the salvage reward from 8,000*l.* to 6,000*l.*, partly on the ground that the judge below had, upon one point, taken an erroneous view of the evidence, and partly upon the ground that, after allowing a sum for the salvor's expenses, he had adopted an unreasonably high standard of remuneration for the salvage services pure and simple. *The De Bay.*

In *The Accomac*, the Court of Appeal increased an award of 1,000*l.*, made by the Court of Admiralty, to 1,800*l.*; holding that the Court below had considerably underrated the element of danger in the position of the salvaged vessel and the difficulty of the salvage operations. *The Accomac.*

Where the Court of first instance has not misapprehended the facts of the case, and has not erred in point of principle, and therefore the success of the appeal against its award depends entirely upon proving that its wide discretion in all questions of amount of reward has been so wrongly exercised in the assessment of the sum awarded, that the Court of Appeal ought to interfere, the appellant has a peculiarly hard task before him. It has even been said by the Privy Council, in the case of one such appeal (*f*), that their lordships would not enter into the question of *quantum* "where there has been nothing to shock the conscience, nothing gross or extravagant." Later judgments of the same tribunal appear to show that this statement is rather too strong. But it is certain that the difference between the amount awarded by the Court below, and that which the appellate tribunal thinks ought to have been awarded, must be, at least, a "very considerable" difference, in order to

Where the appeal is solely on the ground of the amount of the award of the Court below being unreasonably great, or unreasonably small, the Court of Appeal will only interfere if it very widely differs from the Court below as to what is due to the salvors.

(*f*) *The Carrier Dove*, 2 Moore, P. C. (N. S.) 243, at p. 254. In *The De Bay* (P. C.), 8 App. Cas. 559, at p. 565, it is said that "It is only where the amount awarded is grossly in excess of what appears to be right that their

lordships would feel justified in overruling the decision of a Court below on a question of salvage." And cf. *The Baku Standard* (P. C.), (1901) A. C. 549, where the same test was adopted (p. 553).

**Chapter VI.** induce the latter to interfere. The rule was laid down in these terms, by the Privy Council, in *The Clarisse* (g), and the judgment in that case, upon this point, has since been cited with approval in the judgments of the Privy Council in *The Neptune* (h), *The England* (i), *The Glenduror* (k), *The Amérique* (l), and *The Thomas Allen* (m). The judgments in the Court of Appeal in *The Lancaster* (n), *The Star of Persia* (o), and *The Accomac* (p), and the judgments in the Court of Appeal and the House of Lords in *The Glengyle* (q), are substantially to the same effect. "It has been urged," said Lord Esher, M. R., in *The Accomac* (*ubi sup.*), "that we are to act in these salvage appeals upon the same rule that we act upon with regard to setting aside the verdict of a jury on a question of fact; viz., that we are not to interfere with it unless it (the award) is an amount so large or so small that no reasonable person could fairly arrive at that sum. That is not the rule. If, after carefully considering the facts, and after giving every possible weight to the view of the judge, we think it greatly in excess, and so greatly as to be unjust to the owners of the ship which had been in distress, we are bound to alter the amount by lessening it" (p).

The rule applies equally to the increase and to the diminution of the award of the Court below. "There are cases," said Lord Chelmsford, in delivering the judgment of the Privy Council, in *The Chetah*, "in which their lordships have increased the amount awarded for salvage services, on the ground that the judge had formed too low an estimate of the value of such services; and in principle there can be no difference between increasing and diminishing an amount awarded in these cases, both being equally an interference with judicial discretion" (r).

The difference must be at least to the extent of one-third.

In the judgment of the Privy Council in *The Glenduror* (s), it was suggested that the minimum difference justifying interference with the award of the Court below should be one-third,

(g) Swab. 129, at p. 134.

(h) 12 Moore, P. C. 346, at p. 351.

(i) L. R. 2 P. C. 253, at p. 256.

(k) L. R. 3 P. C. 589, at pp. 592, 594.

(l) L. R. 6 P. C. 468, at p. 472.

(m) 6 Asp. M. L. C. 99, at p. 100.

(n) 9 P. D. 14.

(o) 6 Asp. M. L. C. 220, at p. 221.

(p) (1891) P. 349, at p. 354.

(q) (1898) P. 97, at p. 111; (1898) A. C. 519, at pp. 520, 523.

(r) L. R. 2 P. C. 205, at pp. 210, 211.

(s) *Ubi sup.*

and this suggestion was accepted in the judgment in *The Thomas Allen* (t). Chapter VI.

Where an award made by the judge of the Admiralty Division has been affirmed by the Court of Appeal, the case must be "exceptional and extraordinary" (u) to induce the House of Lords to alter the award: it will only interfere where the established principles have not been satisfactorily applied.

Appeal to the House of Lords.

Instances of an increase of the award on appeal, on the ground of its being unreasonably small, are afforded by the cases of *The Glenduror* (v), *The Thetis* (x), *The Caledonian Steamship Co. v. Hutton* (*The Medora*) (y), *The Scindia* (z), *The True Blue* (a), and *The City of Berlin* (b); and of a diminution on the ground of the award being unreasonably large, in *The Chetah* (c), *The Thomas Allen* (d), *The Lindfield* (e), *The Gipsy Queen* (f), *The Prince Llewellyn* (g), and *The Toscana* (h).

When the Court of Admiralty has wrongly dismissed a salvage action, the Court of Appeal, reversing that decision, may also, if the facts are in evidence before it, itself award the amount of salvage due (i).

(t) *Ubi sup.*

(u) (1898) A. C. 519, at p. 520.

(v) *Ubi sup.*

(x) 2 Knapp, 390.

(y) 5 Notes of Cases, 156.

(z) L. R. 1 P. C. 241, 257.

(a) *Ibid.* p. 250.

(b) 3 Asp. M. L. C. 491.

(c) L. R. 2 P. C. 205.

(d) 6 Asp. M. L. C. 99.

(e) (1894) 10 Times L. R. 606.

(f) (1895) P. 176.

(g) (1904) P. 83.

(h) (1905) P. 148.

(i) *The Glengarry*, Shipp. Gaz. Weekly Summary, November 26th, 1884. The same course had been taken by the Privy Council in *The Minnehaha*, Lush. 335.

## CHAPTER VII.

### OF APPORTIONMENT.

*May come before the Court in either of two ways.*

*When the Court is bound to apportion.*

*The Court's discretion.*

*Apportionment :—*

- (1.) *To Owners—*
  - (a) *Of Salving Vessels generally.*
  - (b) *Of Steamships.*
  - (c) *Of Fishing Vessels.*
- (2.) *To Master of Salving Vessel.*
- (3.) *To Officers and Crew.*
- (4.) *To Passengers.*
- (5.) *To Associates of actual Salvors, including non-navigating Members of the Crew.*
  - (a) *In the case of private Ships.*
  - (b) *In the case of public Ships.*
- (6.) *To Lifeboatmen.*
- (7.) *To Salvors belonging to King's Ships and to Coastguard.*
- (8.) *To independent Salvors.*
- (9.) *As between different sets of Salvors.*
  - (a) *Where their Services have begun contemporaneously.*
  - (b) *Where their Services have not begun contemporaneously.*
  - (c) *Where the second set have dispossessed or superseded the first.*

*Under what circumstances the misconduct of one Salvor or set of Salvors affects another.*

*Payment of the Share of a deceased Salvor.*

**May come before the Court in either of two ways.**

THE apportionment of the salvage reward is a matter which may come before the Court in either of two ways. It may form the subject of an action, called an action for distribution of salvage, the substantive object of which is to obtain an appor-

tionment; or it may be raised in the course of an ordinary salvage action by some of the parties who are interested in the award.

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In cases of salvage within the Merchant Shipping Act, 1894, the Court is bound, under the provisions of sect. 556, to make an apportionment of salvage if properly applied for, unless it finds that the exercise of its jurisdiction is barred by an agreement for the division of the salvage which is valid and binding upon the applicant (*a*), or by an equitable, that is to say, a reasonably adequate, tender (*b*).

Under M. S. Act, 1894, s. 556, the Court is generally bound to apportion.

The application for an apportionment ought to be made promptly after the total amount of salvage has been ascertained; but the Court will allow, in the matter of time, any reasonable latitude to one who is in the position of a seaman, if it deems him to be justly dissatisfied with the share of the salvage which has been offered to him by the owner of the salving vessel, to whom the total amount of the salvage awarded has been paid (*c*).

The application for apportionment should be made promptly.

In apportioning, as well as in assessing, the amount due for salvage, the Court of Admiralty, whilst it recognises the guidance of certain general principles, exercises at the same time a wide discretion according to the circumstances of each individual case (*d*).

The Court has a wide discretion.

As between the owners of a salving vessel, on the one hand, and her master, officers, and seamen, on the other, the Court's apportionment of the salvage reward depends upon the nature and circumstances of the salvage service. If the chief factors in the successful performance of the salvage service are the courage, skill, and labour of the crew—as, *e.g.*, where hands are sent to navigate the vessel in distress—and there has been

**Owners of salving vessels.**

Their share depends upon the character and circumstances of the salvage service.

(*a*) See, as to "Agreements," Ch. IX.

(*b*) See, per Dr. Lushington, *The Enchantress*, Lush. 93, at p. 95.

(*c*) *The Spirit of the Age*, Swab. 286, at p. 287. Apportionment is not a proper subject for an action at law. See *Atkinson v. Woodall*, 34 L. J.

Mag. Cas. 174, referred to above, Ch. I. p. 17.

(*d*) A long list of cases of apportionment, classified according to the nature of the salvage, will be found in Pritch. Adm. Dig. 3rd ed. (1887), vol. 2, pp. 2119—2123.

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no great risk to the property of the shipowner, it is the crew, and not the shipowner, who are entitled to the chief share of the reward. If, on the other hand, it is principally by means of the ship itself that the salvage has been effected—as is usually the case when the salving vessel is a steamer—the owner's share will be the larger; and if, besides, his vessel and her cargo were valuable and were exposed to great risk, it will be larger still.

“As to the owners,” said Sir Christopher Robinson in *The Jane* (e), “. . . the general principle of law is that the claims of owners generally are very slight, unless, from the circumstances of the case, their property becomes exposed to danger, or they incur some real loss or inconvenience. It is an ancient principle of the Court adequately and liberally to reward the personal services of persons who are actually engaged in the performance of the salvage service.” In the case of *The Nicolina* (f), the ship was discovered at sea, abandoned by her crew, about ninety miles to the north-west of the Scilly Islands. The master of the *Clara and Emma*, a West Indiaman, with a valuable cargo on board, and bound from Jamaica to London, put three of his men and his chief mate on board the derelict, and she was with difficulty brought to Milford Haven. The value of the ship and cargo was 1,153*l.* Dr. Lushington, out of a total salvage reward of 550*l.*, apportioned 100*l.* to the owners of the *Clara and Emma*, 100*l.* to the master, 100*l.* to the mate, 150*l.* to the three men who with him navigated the *Nicolina*, and 100*l.* to the rest of the crew. In the course of his judgment he said:—“With respect to the apportionment of the sum awarded, the distribution, in all cases of this kind, between the owners and the crew, must depend upon the circumstances of each individual case. Where no risk has been incurred by the vessel rendering the assistance, it is not the usual custom for the Court to decree to the owners any large portion of that reward which more properly belongs to the individuals whose services have effected

(e) 2 Hagg. 338, at p. 343; see also *The Salacia*, 2 Hagg. 262, at p. 264; per Dr. Lushington, *The Perla*, Swab. 230, at p. 232.

(f) 2 W. Rob. 175: see for like cases, *The Watt*, 2 W. Rob. 70; *The*

*Charles*, L. R. 3 A. & E. 536, in each of which one-eighth of the award was apportioned to the owners of the vessel which supplied the actual salvors; and the cases cited in Ch. V. p. 124, n. (u).

the safety and preservation of the ship. Upon the present occasion I must not forget that the ship and cargo of the [Clara and] Emma engaged in the performance of the salvage service are of considerable value, and that a large portion of her crew was withdrawn, and consequently, to a certain extent, the risk of the Clara and Emma was increased."

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In the vast majority of salvage cases nowadays the salvaging vessel is a steamship, and the chief instrument in effecting the salvage service is the steam power. Naturally, therefore, the number of salvage cases in which it will be found that the larger proportion of the reward has been apportioned to the owners has greatly increased since that which may be called the sailing-ship period (g). Speaking in the year 1860, in the case of *The Enchantress*, Dr. Lushington, after quoting the passage cited above, from the judgment of Sir Christopher Robinson in *The Jane*, proceeded to point out that "in later times the introduction of steam power has effected a considerable change in the practice of the Court, and no doubt reasonably, for a steamer is now most frequently the principal salvor. It is equitable in such cases that the owners on whom the chief risk and all the expense falls should be rewarded in a much higher proportion than owners were formerly, and the Court has acted accordingly" (h). Since 1860 the size and the value of ocean steamers, and the importance of punctuality in performance of their engagements (often fixed and advertised long in advance), have gone on increasing; and Dr. Lushington's successors have frequently dwelt upon the necessity of liberality in awarding salvage to the owners of such vessels, in the interest alike of the owners and the insurers of ships and cargoes. Unless such a policy were maintained, the owners of these large and costly steamers, often carrying mails and passengers, besides valuable cargoes, would

But where the power of a steamship is the chief factor in the salvage work, the owners are entitled to a large share of the reward.

The share ordinarily awarded to them has advanced in recent years.

(g) Cf. per Pardee, J., *The New Orleans*, 23 Fed. Rep. 909, at p. 911: "No amount of reward to owners and machinery will so stimulate and encourage efforts to save life and property in peril on the high seas as will moderate rewards to masters and crews who are on hand to control the ship and machinery, and are the effective agents to set the machinery in motion"

(cited by Locke, J., *The Dupuy de Lorne* (1893), 13 U. S. App. (5th circ.) 662, at p. 671).

(h) *The Enchantress*, Lush. 93, at p. 96. Language to the same effect will be found in the judgment in *The Spirit of the Age*, Swab. 286, at pp. 286, 287; *The Princess Helena*, Lush. 191, at p. 197.



**Chapter VII.** lie under a strong temptation to forbid their captains to undertake the risk of salvage operations except so far as they might be absolutely necessary for the saving of human life (*i*).

Accordingly, in recent years, the proportion of the reward allotted, under ordinary circumstances, by the Court of Admiralty to the owners of a salving steamship has steadily advanced. The utmost amount ever decreed to them by Dr. Lushington's predecessors was a moiety of the sum awarded (*j*). Dr. Lushington himself very seldom gave them a larger proportion (*k*). During the thirteen years of Sir Robert Phillimore's judgeship (*l*), ending in 1883, wherever the principal service consisted in the towage of the disabled ship, the owners were apportioned occasionally three-fourths (*m*), but usually about two-thirds (*n*). Since 1883, they have received three-fourths so frequently (*o*), that this may fairly be called, as it was by Butt, J., in his judgment in *The City of Paris* (cited below), the "ordinary" apportionment. But the three-fourths share, although the more common, is by no means the invariable apportionment to the owner of the salving steamship at the present time. With reference to an apportionment made on that basis, Lord Esher, M. R., remarked in *The Gipsy Queen*: "That may be a very good working principle; but there is no such rule. The apportionment must in each case depend upon the particular circumstances" (*p*).

It is now ordinarily about three-fourths.

But there is no fixed rule.

Examples of variation.

The following are examples of variation in apportionment to owners:—

In *The Nasmyth* (*q*), out of 200*l.*, the proportion allotted to

(*i*) See on this point Ch. VI. pp. 148, 149, above.

(*j*) Per Dr. Lushington, *The Louisa*, 2 W. Rob. 22, at p. 25.

(*k*) See cases cited above, p. 171, n. (*h*). For examples, see *The Beulah*, 1 W. Rob. 477; *The Saint Nicholas*, Lush. 29.

(*l*) Williams & Bruce, Adm. Pr. 3rd ed. p. 172, n. (*s*).

(*m*) See, for an example, *The Kenmure Castle*, 7 P. D. 47. *The Cargo ex Sarpedon*, 3 P. D. 28, 32, n., was not a case of towage, but there also the same proportion was awarded.

(*n*) See *The Livietta* (to the ss. *Walton*), 8 P. D. 24. In *The Cleopatra*, 3 P. D. 145, the owner's proportion was three-fifths.

(*o*) See, for examples, *The Gelderland*, Shipp. Gaz. Weekly Summary, December 17th, 1884; *The Claymore*, *ib.* February 23rd, 1889; *The Peninsular*, *ib.* July 12th, 1901; *The Persia*, W. N. (1902) 210; and cases cited by Williams & Bruce, Adm. Pr. 3rd ed. p. 172, n. (*s*).

(*p*) (1895) P. 176, at p. 177.

(*q*) 10 P. D. 41.

the owners by Butt, J., was 140*l.*, or seven-tenths. In *The Castlewood* (r), the Privy Council, varying on appeal the decree of the Vice-Admiralty Court of Bermuda, increased the share apportioned to the owners of the salving steamship from three-sevenths to four-sevenths. In *The Farnley Hall* (s), where very considerable danger had been incurred by the crew, but, at the same time, the salvage service was achieved mainly by the steam power of the salving vessel, the Privy Council, on appeal from the Court of Admiralty, whilst increasing the total amount of the award, reduced the owner's proportion from two-thirds to five-ninths. In *The City of Paris* (t) there were two salving steamers, the *Aldersgate*, which towed, and the *Ohio*, which stood by and otherwise assisted the vessel in distress. Butt, J., awarded to the *Ohio* 600*l.*, of which he apportioned two-thirds (400*l.*) to the owners, and to the *Aldersgate* 7,500*l.*, of which he apportioned 5,625*l.*, or three-fourths (besides a sum of 500*l.*, for damage by straining to hull and engines), to the owners. In reference to the apportionment to the owners of the *Aldersgate*, the learned judge is reported to have said: "The ship, of course, was the principal agent in salving the property, and there was no extraordinary difficulty, labour, or risk to the captain, officers, and crew. Therefore, I see no reason to depart from the ordinary practice of awarding three-fourths of the salvage to the owners." In *The Lundy* (u), where the salving vessel was a tank steamship specially built for carrying petroleum, the Court, in consideration of the serious risk of straining incurred in the performance of the services, apportioned to her owners 1,050*l.* out of an award of 1,300*l.*, or almost five-sixths. In *The Dunottar Castle* (v), where the value of the salving steamship, the *Runic*, her cargo, and freight was 308,386*l.*, and her steam power had been the effective instrument of the salvage services, Barnes, J., out of an award of 4,500*l.*, apportioned 3,750*l.*, or five-sixths, to the owners of the *Runic*, 300*l.* to her master, and 450*l.* to her crew. Lastly, in *The Italia* (x), where the *Etonian*, a large liner running in a regular trade, had towed

(r) 4 Asp. M. L. C. 278.

(s) 4 Asp. M. L. C. 499.

(t) Shipp. Gaz. Weekly Summary, June 7th, 1890.

(u) Shipp. Gaz. Weekly Summary, April 19th, 1901.

(v) W. N. (1902) 70.

(x) (1906) 95 L. T. (N. S.) 398.

Chapter VII. a disabled passenger liner about 190 miles, the Court, out of an award of 3,750*l.*, apportioned 3,000*l.*, or four-fifths, to the owners of the *Etonian*.

Owners of fishing vessels are also regarded with favour in the apportionment.

If we turn to the case of vessels other than steamships, it appears from some of the cases that the owners of a fishing vessel which is diverted to salvage services should be treated with special liberality in the distribution of the reward, although the apportionment in such a case is not to be treated in the same way as where the services have been rendered by a steam vessel (*y*). In the case of *The Albion* (*x*), Sir John Nicholl awarded the owners seven-twentieths of the total salvage of 1,000*l.*; and he offered, in the course of his judgment, that if a scheme for the apportionment of salvage could be agreed upon by counsel, he would make it a rule of the Court. The practicability of this suggestion was questioned by Dr. Lushington in *The Louisa* (*a*); but at the same time he expressed an opinion that the owners of fishing vessels are generally entitled to liberal treatment, first, because their business is interrupted; and, secondly, because the expense of navigating such vessels is exceptionally large so far as regards the wages of the mariners (*a*). In a later case of the same title (*b*), the learned judge pointed out that much would depend, as to the amount apportioned to the owner of a fishing vessel, upon her actual employment at the time when she enters upon the salvage service. "Where a fishing vessel has been actually called off from a lucrative employment in order to render a salvage service, I have always considered that such a fact formed an essential ingredient in the estimate of the salvage award." In *The Deveron* (*c*), Dr. Lushington awarded the owners of a fishing vessel seven-sixteenths of a total salvage reward of 1,600*l.*

The grounds of this treatment.

The master. The master of the salving ship not only takes his share in the

(*y*) See per Sir J. Nicholl, *The Albion*, 3 Hagg. 254, at p. 256. As to the consideration in the award of loss of profits, see above, Ch. VI. p. 162.

(*x*) 3 Hagg. 254.

(*a*) 2 W. Rob. 22, at pp. 25—27.

(*b*) *The Louisa*, 3 W. Rob. 99, at p. 100.

(*c*) 1 W. Rob. 180. The fact that the salving vessel in this case was a fishing vessel appears from the judgment in *The Louisa*, 2 W. Rob. 22.

actual work, but also has a peculiar burden of responsibility (d) **Chapter VII.** in undertaking and in conducting the salvage enterprise, and Is usually entitled to a special apportionment. therefore, under ordinary circumstances, he is held to be entitled to receive out of the salvage reward a special recompense (e). The share allotted to him has often been from one-half to one-fourth of that allotted to the master and crew. In recent cases of salvage by steamers his share has usually been one-third (f). But, as Lord Esher, M. R., pointed out in *The Gipsy Queen* (g), "that may be a very good working principle; but there is no such rule"; and the amount of the recompense will vary according to the particular facts of each case. In *The Howard* (h), Sir J. Nicholl, out of a total award of 2,000*l.*, apportioned 1,000*l.* to the owners, 500*l.* to the master, and the balance of 500*l.* in twenty-one shares to the officers and crew according to their respective ratings. In *The Martin Luther* (i), Dr. Lushington, out of a total award of 1,500*l.*, apportioned 600*l.* to the owners, 400*l.* to the master, and the balance of 500*l.* for division amongst the rest of the officers and the crew. In *The Castlewood* (j), where the master of the salving vessel was held to have shown great skill in the navigation of the vessels under more than usually difficult circumstances, the Privy Council, out of a total award of 3,600*l.* allotted him 700*l.* On the other hand, in *The Atlantis* (k), out of a total award of 3,300*l.*, the Court apportioned to the captain only 225*l.*, "because he did not act with quite the full amount of skill." In *The Dunottar Castle* (l), where the salving vessel was a large mail steamship, valued with her cargo and freight at 308,386*l.*, the Court, in consideration of the responsibility which her master had assumed in undertaking the salvage services, allotted to him two-thirds of the balance of the award after apportionment to the owners. **Examples.**

(d) See above, Ch. VI. p. 153.

(e) See per Dr. Lushington, *The Martin Luther*, Swab. 289, at p. 290; *The Himalaya*, *ibid.* 515, at p. 518; Sir R. Phillimore, *The Charles*, L. R. 3 A. & E. 536, at p. 538.

(f) See Williams & Bruce, *Adm. Pr.* 3rd ed. p. 169, n. (a). For recent examples, see *The August Korff*, (1903) P. 166; *The Rupel*, Shipp. Gaz. Weekly Summary, May 26th, 1905.

(g) (1895) P. 176, at p. 177.

(h) 3 Hagg. 256, n. (a).

(i) Swab. 287.

(j) 4 Asp. M. L. C. 278.

(k) Shipp. Gaz. Weekly Summary, Dec. 15th, 1893. In *The Duisberg*, Shipp. Gaz., March 16th, 1901, the master of the salving vessel received no reward, because through an error of judgment he had caused injury to the salved vessel.

(l) W. N. (1902) 70.

**Chapter VII.**

Upon the same principle of rewarding specially the person who has the responsibility of directing the employment of the salving vessel in the service, if the manager of the company to which the salving vessel belongs is himself in charge superintending, the Court may apportion to him a larger share of the reward even than that apportioned to the master. Thus, in *The Tees* and *The Pentucket*, where these vessels were in peril from fire in the port of London, and were rescued by the steamship *Undaunted*, the manager of the company to which the *Undaunted* belonged, who was in charge superintending, was awarded 300*l.*, and the master 200*l.* (*m*).

**Officers and crew.**

Are usually apportioned a lump sum for division according to their ratings.

As to the officers and seamen, the apportionment usually takes the form of a lump sum to be shared by them according to their rating. In several recent cases (*n*), however, the Court has made an exception in favour of navigating officers, whose rating is lower than that of engineers, by directing that for the purpose of apportionment they should be treated as rated equally with the corresponding rank of engineers.

**Special rewards.**

Cases sometimes occur in which justice to the special gallantry or special labour of an officer or seaman requires that he should be specially rewarded (*o*). The Court of Admiralty has always been prompt to recognise a claim of this nature, and it has, in some of such cases, apportioned to a mate or to a common seaman an amount exceeding the reward of the master of the salving vessel. The ship *Grenada*, bound from Singapore to Liverpool with a general cargo, when about four days' sail

**Examples.**

(*m*) Lush. 505.

(*n*) For examples, see *The Derrick Pontoon*, Shipp. Gaz. Weekly Summary, May 4th, 1906; *The Italia*, *ib.* May 25th, 1906; and *The Algorea*, *ib.* July 20th, 1906. In the earlier case of *The Bremen* (1906), 10 Asp. M. L. C. 229, an application for this method of apportionment was rejected on the ground that an exception from the ordinary practice of the Court should be made only when any particular member of the crew had rendered special service.

(*o*) For instances, in addition to those cited in the text, of the apportionment of special sums for special

services, see *The Jane*, 2 Hagg. 243; *The Nicolina*, 2 W. Rob. 178; *Carmichael v. Brodie*, *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454; *The Andrina*, L. R. 3 A. & E. 286; *The Sarah*, 3 P. D. 39; *The Craigs*, 5 P. D. 186; *The Killeena*, 6 P. D. 193; *The Norseman*, Shipp. Gaz. Weekly Summary, March 30th, 1893; *The Elise*, W. N. (1899) 54; *The Santiago* (1900), 9 Asp. M. L. C. 147; *The Minneapolis*, (1902) P. 30; *The Lord Clyde*, Shipp. Gaz. Weekly Summary, May 2nd, 1902; *The Vega*, *ib.* February 19th, 1904; *The Mazatlan*, *ib.* August 11th, 1905.

from Chili, fell in with the barque *Golondrina*, laden with copper regulus, and bound from Chanaral to Swansea. The *Golondrina* was in distress, her first and second mates having deserted her previous to her sailing from Chanaral, and her master having jumped overboard in a drunken frenzy. At the request of those on board the *Golondrina*, the master of the *Grenada* put on board of her his second mate, who, after great difficulty, succeeded in bringing the *Golondrina* safely into Swansea. The Court awarded 1,000*l.* to the owners of the *Grenada*, 200*l.* to her master, 300*l.* to the second mate, and 300*l.* to the rest of the crew (*p*). Where the ship *Scythia*, on a voyage from Melbourne to London, fell in with the *Rasche*, a derelict brigantine, 220 miles to the westward of the Lizard, in the month of February, and the mate and three hands of the *Scythia* were put on board the derelict, and they, in circumstances of great difficulty and danger, and after much hardship, brought her in safety to Liverpool, Sir Robert Phillimore awarded to the owners of the *Scythia* 500*l.*, in addition to 100*l.* 18*s.* 2*d.* for expenses, 600*l.* to the mate, 520*l.* to each of the three seamen who went on board the *Rasche*, and 360*l.* to be divided amongst the master and the rest of the crew (*q*). Two Norwegian barques bound to England fell in with each other in the Atlantic, about 3,000 miles from Liverpool. One of them, the *Skibladner*, was in distress, her first mate having died, and her master, second mate, and one of the crew being sick with yellow fever. The other barque was short-handed, but her mate, with the consent of her master, went on board the *Skibladner*, and navigated her to Liverpool. During the voyage the master, second mate, and two of the crew of the *Skibladner* died. The Court awarded 600*l.* to the mate of the salving vessel, 100*l.* to her owners, 50*l.* to her master, and 150*l.* to the rest of her crew (*r*). In *The Saint Nicholas* (*s*), where, in the course of the salvage service, a boat had at great peril been sent from the salving vessel to take men on board the *Saint Nicholas*, which was totally disabled at the time, Dr. Lushington, out of 800*l.* awarded by him to the crew of the

(*p*) *The Golondrina*, L. R. 1 A. & E.  
334.

(*q*) *The Rasche*, L. R. 4 A. & E. 127.

K.

(*r*) *The Skibladner*, 3 P. D. 24.

(*s*) Lush. 29.

N

Chapter VII. salving vessel, ordered double shares to be paid to the men who went in the boat and boarded the *Saint Nicholas*. In *The Watt* (t) three-fourths of the amount awarded for the salvage of a derelict was apportioned to the seven persons who went from the salving vessel to navigate the derelict.

The s.s. *Crown Point* on the 14th May, 1901, in the Atlantic, fell in with the barque *Planet*, which was in distress, her first mate having died, and her master, second mate, and several of the crew being ill with scurvy. The second officer of the *Crown Point* went on board the barque, and, after an ineffectual attempt on the part of the *Crown Point* to take the vessel in tow, he proceeded to navigate her under sail. With great difficulty he ultimately brought her on the 28th May to Queenstown—a distance of about 210 miles. During the voyage the master and second mate of the *Planet* died. The Court being asked to apportion the sum of 852*l.* 15*s.* among the various claimants, gave 642*l.* 15*s.* to the second officer of the salving vessel, 75*l.* to the owners, 50*l.* to the master, 20*l.* to the first officer, 15*l.* to the third officer, and 50*l.* to the crew (u).

**Runners.** “Runners,” that is, men engaged as crew for a single “run,” shared in the award in *The Rasche* (x), in the proportions in which they would have shared had they been able seamen. In *The Persia* (y), their shares were directed to be calculated on the basis of the ratings of the members of the crew whose places they were filling at the time of the salvage services.

**Apprentices.** There appears to be no rule or settled practice with regard to the apportionment to apprentices. In *The Hope* (z), Sir John Nicholl directed that they should take shares with the seamen of the lowest rate. Dr. Lushington, in *The George Dean* (a), directed that their shares should be taken at two-thirds, and, in *The Beulah* (b), at one-half, of those of the able seamen. In *The Rasche* (c), Sir Robert Phillimore decreed that the shares of the apprentices should be calculated as if they were able seamen.

(t) 2 W. Rob. 70.

(u) *The Planet*, Shipp. Gaz. Weekly Summary, January 31st, 1902.

(x) L. R. 4 A. & E. 127.

(y) W. N. (1902) 210.

(z) 3 Hagg. 423, at p. 425.

(a) Swab. 291.

(b) 1 W. Rob. 477.

(c) L. R. 4 A. & E. 127.

The reward of passengers on board the salving vessel, who assist in the work of the salvage service, will depend upon their position, and the part which they take in the enterprise. In *The Hope* (d), Sir John Nicholl decreed that the passengers on board the salving vessel were entitled to share as able-bodied seamen. In *The Perla* (e), Dr. Lushington awarded to a foreign master and some seamen, who were passengers on board the salving vessel, that they should have an apportionment as able seamen, the master taking a double share.

## Chapter VII.

## Passengers.

Apportionment depends upon their position and merits of their service.

It is clearly settled in regard to vessels not engaged in employment of a public nature—and several of the cases cited above afford examples of its application (f)—that, whilst those of the crew who go out to do the active work of the salvage service may thereby earn for themselves a larger share of the salvage reward, their comrades who remain on board are also entitled to some share of it, unless, indeed, they refuse to concur in undertaking the salvage service (g).

## Associates of actual salvors.

Where a salvage is performed by some of the crew of a private ship, the rest, if willing to serve, are entitled to a share of the reward.

The rule is stated, and rather quaintly supported by the quotation of Scriptural authority, in the judgment of Dr. Lushington in *The Sarah Jane* (h): "It has been the rule of this Court, from time immemorial, to allow persons who remain on board a salving ship to be considered as co-salvors, although the Court has repeatedly made a distinction in favour of those persons who actually have incurred the difficulty and peril of the salvage enterprise. Indeed, the principle upon which they are admitted is as old as Holy Writ; for it is there stated that they who continued in their tents divided the spoil with their brethren." The justice of the rule is, indeed, evident; for the withdrawal of those who go certainly casts more labour, and may bring danger, upon their fellow seamen who are left behind to navigate the salving ship.

A somewhat curious claim on behalf of associates of salvors was allowed, in *The Auguste Legembre* (i). In that case salvage services were performed by a steam-lifeboat in towing a disabled

(d) 3 Hagg. 423, at p. 425.

(e) Swab. 230, at p. 232.

(f) See *The Golondrina*, *The Rasche*, *The Skibladner*, *The Planet*, cited above; see also *The Mountaineer*, 2 W. Rob. 7; *The Nicolina*, ib. 175; *The*

*Roe*, Swab. 84; *The Janet Mitchell*, ib. 111; *The Charles*, L. R. 3 A. & E. 536.

(g) *The Baltimore*, 2 Dods. 137.

(h) 2 W. Rob. 110, at p. 115.

(i) (1902) P. 123.



Chapter VII. steamship into port. Another lifeboat, which by the Regulations of the Royal National Lifeboat Institution was required to accompany the steam-lifeboat, remained fast astern of the steamship during the towage, and rendered no service. Barnes, J., in an action of salvage, held that the crew of the latter lifeboat ought to be treated as part of the crew of the steam-lifeboat, and decreed a small award to them.

**Non-navigating portion of the crew.**

The rule of participation extends to non-navigating members of the crew. So in the case of *The Spree* (*k*), a doctor, stewardess, baker, and other persons of an analogous description on board the salving steamship, who took no part in the navigation of the ship, were awarded half shares, according to their rating. In dealing with the claim of these persons, Barnes, J., said: "A question, however, arises which it is important to consider having regard to the fact that salvage services are now rendered, and may in future be often rendered, by large steamers carrying a number of non-navigating persons; that is to say, persons who are simply there for the purpose of attending on the passengers, such as stewards, cooks, and others, or whose principal duties, at any rate, are of that character. I have not been referred to any authority by counsel, but I have taken the opportunity of looking through a number of cases, and I think that in this class of case no refined distinctions should be introduced between classes of service on board ship, because to do so would render it extremely difficult to arrive at the right amount in each case. It has therefore been the practice to take a broad view, and to say that the crew are properly rewarded if their portion of the salvage is in accordance with their rating. There are many cases, however, in which a departure from that rule has been acted upon in this court, where special danger has been incurred (*l*); for instance, in cases where the boat service has been performed at great risk, the Court has very commonly given the men in the boat a double portion. That possibly is not commensurate with the risk they run as compared with those who remain on board the ship, but it affords a sufficiently fair rough-and-ready mode of dealing with the matter without great nicety or refinement. I am not at all prepared to say

(*k*) (1893) P. 147.

(*l*) See above, p. 176.

that stewards and others of that class ought to be looked upon with a discriminating eye, for the simple reason that, although their duties are not such as to ordinarily bring them in contact with the work of navigating the ship, they may at any moment be called upon to assist in the salvage operations, as happened in a case recently before me (*m*), where all available hands on board the ship were ordered by the master to assist in carrying the hawser, and the stewards, and possibly the stewardess, in that case did everything that was desired.

"In this particular case, however, according to the admission of their counsel, the non-navigating members of the crew did not take any part in rendering assistance to the other ship; but it must not be forgotten that they were there ready to do anything that might be required, and incurred any risk which might endanger the ship herself. At the same time, it is perfectly obvious that they did not run any real risk beyond what was run by the ship herself, nor did they perform any other duties at all except being a little longer on their passage, and making some preparations for receiving the crew of the other vessel in case anything happened to her.

"Acting on the principles the Court has always been guided by, viz., to try to apportion the salvage award in such a way as to do what is right between all parties, it will be well, in this particular case, without laying it down as a rule (as one must judge of each case as it arises), to say that these people whom I have mentioned, to the number of eleven, ought to receive a half share" (*n*).

In the more recent cases of *The Minneapolis* (*o*) and *The Dunottar Castle* (*p*), the same learned judge gave the non-navigating members of the crew a share in the award on the basis of one-third of their actual rating. But in *The Toscana* (*q*), Sir Francis Jeune preferred to follow the apportionment adopted in *The Spree* (*ubi sup.*), and gave the non-navigating members of the crew shares based on one-half of their actual rating.

(*m*) *The Noordland*, Shipp. Gaz. Weekly Summary, February 17th, 1893.

(*n*) (1893) P. 147, at pp. 152, 153.

(*o*) (1902) P. 30.

(*p*) W. N. (1902) 70.

(*q*) Shipp. Gaz., April 16th, 1904.

In the recent case of *The Algore*, Shipp. Gaz. Weekly Summary, July 20th, 1906, Bargrave Deane, J., adopted the scale of one-third of the rating.



and personally assisted the vessel in distress to get off the Hasborough Sand, where she had got aground, were entitled to any share in the reward. "An objection," said the learned judge, "has been taken by the counsel for the owners [of the salvaged vessel] as to some of the persons claiming salvage, and that objection, so far as relates to the persons remaining on board the lightship, is well founded. The crew of a lightship is very different from that of an ordinary sailing vessel rendering assistance" (z).

Chapter VII.

As has already been stated (p. 121), the Royal National Lifeboat Institution treats lifeboat crews who have become salvors of property as ordinary salvors who have borrowed the lifeboat for the purpose of the service. Consequently its regulations make no provision for division of a salvage award among the crew. They are left to settle their shares by agreement; or the Court may make an apportionment.

Lifeboatmen.

In the case of officers and men of the Royal Navy who earn a salvage reward, the distribution of the amount is usually made according to the Naval Prize Proclamation which is in force at the time (a). But the Court of Admiralty has power to distribute salvage amongst King's ships and their crews, and the King's proclamation only applies to the distribution of salvage where there has been no apportionment by a competent Court (b).

Officers and men of Royal Navy.

The Court has, no doubt, the same power as to apportionment in regard to the officers and men serving in the coastguard stations and on board revenue cruisers, as to whose relative shares in salvage rewards, "in the absence of any special claims or award to the contrary," rules have been laid down by the Admiralty (c).

Coastguard.

(z) Per Dr. Lushington, *The Emma*, 3 W. Rob. 151, at p. 152.

(a) Cf. per Lord Stowell, *The Mary Ann*, 1 Hagg. 158, at p. 161; per Sir J. Nicholl, *The Thetis*, 3 Hagg. 14, at p. 61. The Proclamation now in force is dated the 17th Sept., 1900. It is set out in the 'Navy List.' And see *The Queen's Regulations and Admiralty Instructions*, 1893, Ch. 2, Art. 2093.

(b) *The Mary Adeline*, 13th June, 1854, Pritch. Dig. 3rd ed. (1887) vol. 2, p. 1893.

(c) See Board of Trade Instructions, 1895, Art. 176 (a), set out in Williams & Bruce, *Adm. Pr.* 3rd ed. p. 168, n. (z), and Coastguard Instructions, 1904, issued by the Admiralty, Art. 1281.

**Chapter VII.**  
**Independent**  
**salvors.**

When there are several salvors, and they are not persons between whom there is an association outside the salvage service, such as exists between the members of the crew of a salving vessel and serves, in ordinary cases, to some extent as a guide in the apportionment, the Court can fix the share of each salvor in the salvage fund only by ascertaining, as well as it can, what have been his labour and risk, and the value of his services, as compared with those of his co-salvors. Each case has to be considered according to its particular circumstances; but just as, in the case of a salving ship, its master, or the manager of the company to which it belongs (*d*), so here the man who not only assists personally in the salvage service, but undertakes the responsibility of superintendence, will generally be held to be entitled to a larger apportionment than is got by those who act under the guidance of his superior skill or knowledge. Thus, for example, in *The Nicholaas Witsen* (*e*), the pilot who went out with six boatmen to assist a vessel in distress off Portsmouth, and superintended their exertions, had allotted to him twice as much as was allotted to each boatman.

**SEPARATE**  
**SETS OF**  
**SALVORS.**

So far only the case of apportionment between the various parties who compose a single set of salvors has been considered. But it frequently happens that there are engaged in the salvage service several independent sets of salvors, to each of which the Court has to make a separate allotment out of the total sum awarded for salvage.

(a) Where  
 their services  
 are contemporaneous.

Where the services of the various sets of salvors have been practically contemporaneous in their inception, and not successive, the proportion of the total salvage which is allotted to each set is generally determined by the same considerations as affect the assessment of the total salvage (*f*). Thus, for example, other things being equal, a difference in the amounts awarded will follow if the one set has saved life and property and the other

(*d*) See above, p. 176.

(*e*) 3 Hagg. 369.

(*f*) As to these, see above, Chap. VI.  
 pp. 129—133.

has been concerned with the saving of property only. So in *The Clarisse* (g), a case decided in the Court of Admiralty of the Cinque Ports, the judge (Dr. Phillimore), having before him several claimants of salvage, awarded the largest sum for salvage to the smack *Liberty*, which took off the master and crew of the vessel in distress. "I must consider," said the learned judge, "that the *Liberty*, coming up at the time . . . which enabled her to save life, is entitled to a far larger sum of salvage than the other smacks and vessels" (h). In *The Anna Helena* (i), a case of a very meritorious character, the salvors of life got a less reward than they would otherwise have done, owing to the peculiar circumstance that the persons who had subsequently saved the property had been beforehand in instituting and prosecuting to judgment their salvage claim, and the Court, not knowing then of any claim of salvors of life, had decreed to the salvors of property a moiety of the gross proceeds of the sale of the saved property, with costs. As the gross proceeds only amounted to 608*l.*, the decree left, after allowance for the marshal's expenses, only a comparatively small sum available for the reward of the salvors of life. Sir James Hannen awarded them 150*l.* and costs, saying, in the course of his judgment (k), that he certainly thought that, if he had known of their claim, he would not have given a moiety of the saved value to the salvors of property.

Where the services of the different sets of salvors have not begun together, but a second set of salvors has either, with the consent of the first, joined at a later stage in the prosecution of the salvage adventure, or has taken up a salvage service which the first set of salvors, after rendering some assistance, has been obliged by the force of circumstances, and without fault on its part, to discontinue, the relative share of each set in the total award will be more or less affected by the consideration that the first salvors, if they have acted meritoriously, are, on grounds of

(b) Where their services are not contemporaneous. Favour shown to first salvors.

(g) Swab. 129. The decision was, as the same Report shows, substantially affirmed by the Privy Council on appeal.

(h) Swab. 129, at p. 131.

(i) 5 Asp. M. L. C. 142.

(k) *Ibid.* at p. 143.

**Chapter VII.** public policy, always to be treated with especial liberality in the apportionment. For such liberality is in two different ways of general benefit. It serves, in the first place, to encourage that adventurous promptitude in rendering assistance to life or property in distress at sea which is always praiseworthy, and is often necessary for the accomplishment of the rescue. It serves, in the second place, to prevent a jealousy of second salvors which might otherwise exist, and tempt first salvors, injuriously to the interests to be saved, to shun co-operation when co-operation would ensure, or, at least, materially expedite, the success of the salvage undertaking.

The grounds  
of such  
favour.

But the ap-  
portionment  
mainly de-  
pends upon  
the relative  
value of the  
services  
rendered by  
each set of  
salvors.

The observance, however, of this principle of favourable inclination towards first salvors by no means ranks as the principal factor in the determination of the apportionment of the total salvage between rival salvors, where there is no ground for charging the second set with wrongfully dispossessing or superseding the first. The priority in point of time is merely one of the points which the Court has to consider in the distribution; and it will not count for much where the balance of efficacy or merit is decisively in favour of the second salvors.

Examples.

A few examples of the Court's apportionments in cases of this kind may be useful.

In *The Jonge Bastiaan* (1), a vessel was found by the first salvors stuck fast upon a rock, her bottom beaten in and her rudder lost. They succeeded in warping her off and keeping her afloat for a time sufficient to enable some part of her cargo, which was bullion, to be got out of her. She then sank, and the first salvors left her; but they never intended to abandon her, and they after a while returned to her. A second set of salvors was at that time engaged in trying to weigh her, and this they succeeded in doing, and so saved the vessel and the remainder of the cargo. The Court apportioned the salvage reward equally between the two sets of salvors.

(1) 5 C. Rob. 322.

The *Santipore*, a barque of 515 tons, with a valuable cargo, having got upon the Church Rocks off Folkestone, received assistance from three small vessels, the crews of which numbered in all twenty-one hands, but they were unable to get her off. A tug having also tried in vain to tow her off, a large passenger steamer, the *Princess Mary*, was sent from Folkestone harbour and succeeded in moving her off the rocks and towing her for a few minutes, when, the hawser having broken, she drifted ashore, and became a wreck. Cargo to the value of 9,657*l.* was saved, and the wreck was sold for 140*l.* There was risk to the crews of the three small vessels, and some damage was done to one of the vessels. Dr. Lushington awarded as salvage 700*l.*, and of this he apportioned 450*l.* to the owners, masters and crews of the three small vessels, and 250*l.* to the owners, master and crew of the *Princess Mary*. With regard to this apportionment, the learned judge said in the course of his judgment: "In considering the difference, in point of amount, that I have awarded to these two sets of salvors, I do not shut my eyes to the fact that it may be true that in moving the ship, the steamer, in reality, performed the more essential and important service; but it was not attended with risk or danger. All the hazard of life fell on the first set of salvors" (*m*).

The brig *Julie*, on a voyage from Norway to Cardiff, with a crew of nine hands, on the 13th November, 1882, fell in with the *Livietta*, a derelict brig laden with corn, and in risk of imminent loss between Heligoland and the Dogger Bank, and put a mate and two hands on board of her, who shortly afterwards, the weather having become boisterous, tried to regain their own vessel, but their boat was swamped, and one of the men drifted astern and was rescued by a fishing smack. After great difficulty and hardship the two men left on board the *Livietta* navigated her to within a few miles of Dungeness. There, about noon on the 15th, she was taken in tow by the ss. *Walton*, which had come up to her in response to her signals of distress, and was brought safely into Dover basin. When the *Walton* took her in tow her condition undoubtedly was still one of very considerable peril. The sea was high, the two men on board of her were exhausted by constant labour, exposure, and

(*m*) *The Santipore*, 1 Spks. E. & A. 231.



**Chapter VII.** want of proper food and clothing, and the *Livietta* herself had several feet of water in her hold, which could not be got rid of, as her pumps were choked and she had no pumping gear. Sir Robert Phillimore awarded as salvage a moiety of the value of the property saved, and of this he apportioned three-fifths to the owners, master and crew of the *Julie*, and the remaining two-fifths to the owners, master and crew of the *Walton* (n).

About 12.30 p.m. on the 1st January, 1905, the ss. *Anna*, bound from Blyth to Riga in ballast, was found in a disabled state, about 150 miles E. N. E. of the Tyne, by the *Stirling Castle*, a steam trawler of 216 tons, then engaged in trawling, and valued at 7,000*l.* The *Stirling Castle* was made fast ahead of the *Anna*, and commenced to tow her. The severe weather then prevailing rendered the towage difficult and dangerous. The towing hawsers parted twice, and on each occasion a long delay ensued before the *Stirling Castle* could be made fast again. On the afternoon of the 6th January, when the weather was very bad, the *Anna* anchored twenty miles off Flamborough Head, and the *Stirling Castle*, being short of coal, left her and proceeded to Grimsby. After taking in a supply of coal the *Stirling Castle* returned, but was unable to find the *Anna*, because during her absence the steam trawler *Lapwing* had come up with the *Anna* and taken her in tow. The *Lapwing's* services, which consisted of standing by and towing, lasted from the afternoon of the 6th to 3 a.m. on the 8th January, when she brought the *Anna* to an anchorage in Grimsby Roads. Sir Gorell Barnes, upon a value of 13,702*l.*, awarded a total salvage of 1,400*l.*, of which he apportioned 1,000*l.* to the *Stirling Castle*, and 400*l.* to the *Lapwing* (o).

Instances of  
favour to first  
salvors.

The favour with which the Court regards the efforts of first salvors has been demonstrated by cases where it has been difficult to say that those efforts have contributed anything to the salvage, which is ultimately effected by other salvors, but the first salvors, nevertheless, if they have done their best, and have acted

(n) *The Livietta*, 8 P. D. 24.

(o) *The Anna*, Shipp. Gaz., 30th May, 1905.

with courage, skill, and perseverance, have been rewarded by the Court with a substantial portion of the total reward. The sailing ship *E. U.*, in the early morning of the 27th December, 1852, in very heavy weather, drove upon the Brake Sand from her anchorage in the Downs, and a few hours later beat over the sand and proceeded to drift in the neighbourhood of the Elbow Buoy. The Broadstairs lifeboat, with twelve men, then came alongside. Five of them then returned in the lifeboat to Broadstairs in order to get an anchor and chain, and the other seven stayed on board the *E. U.* to render assistance. They succeeded in wearing the *E. U.*'s head towards the N., but could do nothing more, and in the afternoon, as the water increased in the hold, and the ship became very unmanageable, and there seemed no prospect of rescuing her, they, with the crew of the *E. U.*, got on board the Margate lugger *Ruby*, which they had signalled to lie by them, and reached Margate in safety. The five men who had gone ashore in the lifeboat had, in the meantime, reached Ramsgate. They procured there an anchor and chain, and put them on board the lugger *Ondine*, which then was navigated in search of the *E. U.*, having on board the five lifeboatmen, and also some of their comrades who had come to Margate in the *Ruby*, as well as two of the *Ondine*'s own crew. After some time they discovered the *E. U.* in tow of a steamer, which had picked her up after she had been abandoned, and which afterwards safely brought the *E. U.* into port. The owners of the *E. U.* paid 1,650*l.* as salvage to the owners, master, and crew of the salving steamer. In a suit for salvage, brought by the crew of the lifeboat, and by the owners and crews of the *Ondine* and *Ruby*, the defendants, who had tendered a sum of 200*l.*, pleaded a denial that these parties had rendered any effectual service whatever towards the saving of the ship. This defence Dr. Lushington refused to uphold, whilst, at the same time, he stated his opinion that no one could tell precisely what effect the wearing of the *E. U.*'s head towards the N. might have had; it might have been very beneficial, or it might have been not in the slightest degree instrumental towards the ultimate safety of the *E. U.* Speaking highly of the exertions of the lifeboatmen, the learned judge overruled the tender, and awarded the plaintiffs 300*l.* As he held that the *Ruby* "as the mere vehicle in which the persons were carried," had not strictly

**Chapter VII.** any claim for salvage, and that all that the *Ondine* could claim was a sum in payment for the work of carrying out an anchor and chain, the result of the decision was that the greatest part of 300*l.* was awarded in respect of the efforts of men whose courage and perseverance were indeed deserving of much praise, but of whose actual usefulness the most that could be said was that it could neither be proved nor disproved (*p*). In *The Genessee* (*q*), where the salvage of ship and cargo was ultimately effected by a steamship which performed "the real essential service of bringing the vessel away from the spot she was in," Dr. Lushington apportioned amongst the first salvors, a number of smacksmen who had gone on board the *Genessee* when in a perilous position near the Goodwin Sands, and had done what they could to get her off with skill, courage, and perseverance, and had taken off the crew when she was abandoned, but whose services, so far as regards the property, "turned out to be of no importance," the large sum of 1,500*l.* in addition to compensation for all damages and expenses.

Where first salvors have been dispossessed against their will.

We now come to the consideration of the case of second salvors superseding the first against their consent.

Such dispossession is justifiable only when the interests of the property in peril absolutely require it. In all other cases the second salvors get no share of the reward.

If it appears that the claim of a set of salvors to a share in the salvage reward is based upon the dispossession, against their will, of other persons who were at the time continuously engaged in salving the vessel in distress, and who were willing themselves to persevere in the service which they had begun, the Court allows the claim only if it is clearly proved that the first salvors had not any fair prospect of success. In the absence of such proof, the burden of which lies upon the second set of alleged salvors (*r*), the Court holds the dispossession to be wrongful, and treats the subsequent services rendered by the wrongdoers as enuring wholly to the benefit of those who have been dispossessed, and not as entitling the wrongdoers to any share in the salvage reward. This principle has been recognised and acted upon in several cases (*s*); but it has been

(*p*) *The E. U.*, 1 Spks. E. & A. 63.

(*q*) 12 Jur. 401.

(*r*) See per Sir J. Nicholl, *The Eugene*, 3 Hagg. 166, at p. 160.

(*s*) See, especially, *The Charlotta*, 2 Hagg. 361; *The Eugene*, *ubi supra*; *The Effort*, 3 Hagg. 165; *The Dantzie Packet*, 3 Hagg. 382, at p. 385; *The*

stated nowhere more clearly than in *The Blenden Hall* (t) by Lord Stowell. In that case the *Blenden Hall*, a British vessel, had been taken possession of, on the 12th December, 1813, by the master and ten of the crew of the *Eliza*, a post office packet, which had fallen in with the *Blenden Hall* after she had been captured, scuttled, and left by a French frigate. After clearing her of water, getting a compass on board, and otherwise putting her in order, these salvors proceeded to navigate the *Blenden Hall* to Falmouth. Four days later, and after the *Blenden Hall* had been brought into the chops of the Channel, the *Challenger*, a brig of war, came up, and her captain was asked to supply those on board the *Blenden Hall* with a log-glass, watch, and chart. Instead of doing so, he insisted on putting a master's mate and nine hands on board the *Blenden Hall*, and they took her to Plymouth, where she arrived on 18th December. The value of ship and cargo was 72,000*l*. Lord Stowell held that no share of the salvage reward ought to be allotted to the men from the *Challenger*, and in the course of his judgment (u) said:—"I have no hesitation in confirming the doctrine that I have over and over again laid down, that persons dispossessing original salvors without reasonable cause shall receive no benefit from the services they may afterwards perform; but the whole reward shall go to those who have been wrongfully dispossessed. Those who are wrongdoers shall take no advantage from their own wrong." The "reasonable cause" spoken of in the above passage is described in an earlier part of the same judgment as an "apparent if not an actual necessity," and by Dr. Lushington in *The Pickwick* (x) (the facts of which are referred to below) as the absence of a fair probability that the vessel in distress could be brought into port in due time by the first set of salvors. It may arise either from the want of adequate power, or from the want of adequate skill or knowledge, or from misconduct, on the part of the first salvors; and in such cases interference with them would be held to be not only justifiable, but even laudable (y).

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The law laid down by Lord Stowell in *The Blenden Hall*.

To justify the interference of the second salvors there must be an apparent if not an actual necessity.

*Pickwick*, 16 Jur. 670; *The Fleece*, 3 W. Rob. 278; *The George*, 9th June, 1866, Pritch. Adm. Dig. 3rd ed. (1887), vol. 2, p. 1894.

(t) 1 Dodson, 414; cited with approval by Dr. Lushington, *The Samuel*,

15 Jur. 407, at pp. 409, 410, and *The Fleece*, 3 W. Rob. 278, at p. 280.

(u) 1 Dodson, at p. 418.

(x) 16 Jur. 669, at p. 670.

(y) See *The Blenden Hall*, *ubi supra*, at p. 417.

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If the second salvors have *bona fide* and not unreasonably thought that their interference was necessary, they may get some share in the reward.

It is clear that to exercise a right judgment as to the necessity of intervention on these grounds may sometimes be a matter of considerable difficulty; and therefore, if the Court finds that the dispossession of the original salvors was due to an honest and intelligible, although an erroneous, opinion as to its necessity on the part of those who claim as second salvors, and the latter have rendered beneficial services, it will not decline to allot to them some small salvage reward, whilst awarding to the original salvors the same amount as would have been awarded to them if they had completed the service by themselves.

Examples.

Thus, in *The Maria* (z), where a small Swedish vessel, derelict and disabled, was taken in tow by two fishing smacks, the *Perserverance* and *Ceres*, which proceeded with her towards Harwich, and two hours afterwards, and when they were about ninety miles from Harwich, the gun brig *Mariner* came up, and, after towing with them for a while, dispossessed them altogether, and, the wind having changed, took the *Maria* to Dover, Lord Stowell (then Sir W. Scott), holding that there was in fact no necessity for the interference of the *Mariner*, but holding also that the commander of the *Mariner* honestly thought that there was, awarded two-fifths of the whole value to be divided between the two fishing smacks, after deducting the expenses, but also gave a sum of fifty guineas to the crew of the gun brig.

In *The Charlotta*, where certain Winterton smacks were engaged in towing a derelict vessel to Yarmouth, and they, when at the mouth of the Cable Gut, and about eight miles from Yarmouth, were dispossessed by the revenue cutter *Royal Charlotte*, which completed the salvage, Sir Christopher Robinson, holding that the services of the revenue cutter were useful, although not proved to be necessary, and that there was strong testimony to the general skill and good conduct of her commander, awarded to the smacks two-fifths of the value of the derelict after the salvors' expenses were deducted from it—being the same amount as he would have given if they had done the whole of the salvage work—but also, expressly upon the authority of *The Maria*, gave to the officers and crew of the revenue cutter the sum of 100*l.* (a).

(z) *Edwards*, 175.

(a) *The Charlotta*, 2 *Hagg*. 361.

Again, if the services of the original salvors are not continuous but intermittent and the services of those who afterwards, during a period of intermission, come in and act as salvors against the wish of the original salvors are of substantial benefit to the property in danger, although it is not proved that the original salvors could not by themselves have completed the salvage, the Court may allot to these second salvors some share in the reward. But this share, especially if the interference of the second salvors be accompanied by violence, will be less than the Court would think it its duty to give to other salvors. In the case of *The Clarisse* (b), which has already been referred to upon other points (c), salvage services had been rendered in the first instance by a number of smacks and luggers from Whitstable and Milton, to the cargo of a French brig, which was practically, although not technically, derelict on the Girdler Sand in November, 1855. Certain of these smacks and luggers, which came first upon the scene, after saving the lives of the crew, set to work to save cargo. The vessel herself began to go to pieces shortly after her crew had left her, and these crews agreed to "shut in," that is, to shut out all other persons, and include themselves only in the management of the whole of the salvage work. The work, however, of transshipping and securing the cargo could, it appears, only be carried on intermittently, and other smacks and luggers from Colchester and Margate came up and, against the wish of the first set of smacks and luggers, interfered in the salvage, and actually saved a considerable portion of the cargo. The questions before the Court were: first, as to the amount of salvage to be awarded; and, secondly, as to whether those who thus interfered, and who were called in the judgment the "Colchester men" and the "Margate men," were entitled to any share in it. Upon the second point Dr. Phillimore said, in the course of his judgment: "It is sworn that they would have been sufficient to preserve the whole of the cargo in this case, and that not only no assistance was given, but positive mischief was done by the interference of others. It has been said that there is a known rule in this Court, that there attaches to priority of service a right, which right excludes all other persons from interfering in

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So also, where the services of first salvors are rendered not continuously but intermittently.

Example.

(b) *Swab*. 129.(c) *Supra*, pp. 166, 185.

**Chapter VII.** any way with the right acquired by priority of service. The Colchester men are charged with having sinned against that rule, not by the violence of their conduct, but by their intervention; but the Margate men are charged with violating it both by their intervention and by the violence of their conduct. The Court finds itself in some difficulty as to this part of the case. In the first place, it is evident that one of the most material parts of the case is wanting, namely, the evidence of Lloyd's agent; and, secondly, there is a large *de facto* proportion of the casks salvaged by those who are accused of unnecessary intervention, namely, by the Margate and the Colchester men. The Margate men alone, according to a statement, the truth of which is not denied, but which is admitted on both sides, appear to have saved 1,638*l.* 13*s.* 2*d.* worth of property. In the next place, it must be borne in mind that though these salvors, it must be admitted, were in prior possession, yet they were not in continuous possession. The state of the weather at the time, and the state of the sea, rendered that impossible. It would be carrying the doctrine further than I have seen it done, were I to hold that where the services are necessarily intermittent, it is not competent to other persons in the interim to come in and act as salvors. It must always be a question of circumstances. It is not difficult to see that such a doctrine as that which is here contended for, if carried to the extreme, might lead to the loss of the property itself. Lastly, it must not be left out of consideration that the vessel was at this time actually going to pieces, and that she did go to pieces on the 18th. Now, finding my way as I best can to what I conceive to be the justice of this case, I intend not wholly to exclude the Margate men, or the Colchester men, but to mark, especially in the case of the alleged Margate salvors, the opinion of the Court with respect to their conduct, by a considerable diminution of the salvage awarded to them as compared with that which the Court will think it its duty to give to others."

This judgment was, as the same Report shows, substantially affirmed on appeal.

Where the property is not derelict, or practically derelict, and

Where the property to be salvaged is not derelict, as it was in *The Maria* and *The Charlotta*, or practically derelict, as it was in *The Clarisse*, but its owner or the master of the ship, or

some other representative of the owner is on the spot, and has accepted the service of a salvor; there, any attempt of another person afterwards to interfere *in invitum* as a salvor is, so to speak, doubly wrong in the view of the Court of Admiralty, and cannot entitle such person to any share in the salvage reward. It is an infringement of the rights of the original salvor, which, as has just been shown, only his manifest incompetence or misconduct can justify; and it is also an infringement which, ordinarily, nothing can justify, of the right of the owner or his representative to decide as to the acceptance or the refusal of salvage assistance. It is, of course, just conceivable that an owner or a master of a ship in distress might be guilty of such criminal negligence, so plainly reckless of his duty towards the life or the property entrusted to his charge, that the Court of Admiralty would recognise and reward as salvors those who acted against his will for the preservation of the life or the property in peril. But the general rule is clear that the owner or his representative has a right to decide whether salvage assistance shall be employed or not, and whether or not salvors whose services he has accepted shall be superseded by others (*d*). If, therefore, at any period after one set of salvors has been employed by the person in charge of the property in peril, other persons forcibly and against his and their consent dispossess those salvors and perform the salvage service, they earn thereby no share in the salvage. "I go the whole length of laying down this principle, that where salvors are on board a ship in distress, and their services have been accepted by the master, if, before they have done one stroke of work, they are forcibly dispossessed (without the concurrence of the master) by any persons who in any manner save the ship, or cargo, or part of the same, the alleged second set of salvors can earn nothing for their own benefit, but every act done and every service performed by them must enure to the benefit of the original salvors" (*e*).

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the services of the first salvors have been accepted, interference of second set of salvors earns no reward. Such interference is doubly wrong.

Judgment of Dr. Lushington on this point.

It has been mentioned in a previous chapter (*f*), but it may be well to repeat in this connection, as regards the original

At the same time, a salvor first employed

(*d*) See *The Black Boy*, 3 Hagg. *The Samuel*, 15 Jur. 407, at p. 410.

336, n.; per Dr. Lushington, *The Glasgow Packet*, 2 W. Rob. 306, at 3 W. Rob. 278, at p. 281.

p. 313; *The Barefoot*, 14 Jur. 841, 842; (*f*) Chap. VI. p. 146.



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has no right to insist upon the continuance of his services.

salvors, that the Court of Admiralty, while thus studiously protecting their interest, also marks, in dealing with their claim to reward, its sense of their fulfilment or non-fulfilment of their duty as to the acceptance of further help. The first interest to be considered is the preservation of the property in distress. Even where the property is, in the strict legal sense, 'derelict,' and where, it has been said (*g*), the first occupant has a vested interest and a right of exclusive possession, the first salvor ought not to refuse further efficient aid if the success of his operations comes at any time into jeopardy (*h*); and where the property is not 'derelict,' but the owner or his representative either has never ceased to be in possession or has intervened after a temporary absence, the reward of the salvor whose services have been accepted, or who has begun operations during such a temporary absence, will be diminished, or even, in a gross case, wholly forfeited, if he persists in obtruding his aid after the owner or his representative has dispensed with it (*i*), or if he tries forcibly to exclude the aid of others whom the owner or his representative deems it necessary to employ in the work of salvage (*k*). "Unless the vessel has been utterly abandoned, and is, according to the legal meaning of the word, derelict, the occupying salvor is bound to submit to the orders of the master, when the master appears and claims his authority" (*l*).

Salvors dismissed or superseded

If a salvor, whose services have been accepted, and who is able and willing alone to complete the salvage which he has

(*g*) The law is so stated by the Privy Council in *Cosman v. West*, 13 App. Cas. 160, at p. 181; and see also, per Sir J. Nicholl, *The Dantzic Packet*, 3 Hagg. 383, at p. 385. For a case in which a second set of salvors, able to perform the salvage, were held entitled to resist the claims of the first salvors, who had abandoned the attempt to join in rendering assistance, to repossess themselves, see *The India*, 1 W. Rob. 406.

(*h*) See *The Cambrian*, 15th Dec. 1848, *Pritoh. Adm. Dig.* 3rd ed. (1887), vol. 2, p. 1822.

(*i*) *The Glasgow Packet*, 2 W. Rob. 306. See, also, *The Samuel*, 15 Jur. 407, at p. 410; *The Capella*, (1892) P. 70.

(*k*) *The Dantzic Packet*, 3 Hagg. 383, at p. 385; *The Barefoot*, 14 Jur. 841, 842; *The Martha*, Swab. 489.

(*l*) Per Dr. Lushington, *The Champion*, Brown & Lush. 69, at p. 71. For a case where the salvors were held to have been justified in refusing to allow the intervention of the master of the salvaged ship, see *The Elise*, W. N. (1899) 54.

entered upon, finds himself dismissed or superseded by the orders of the owner or master of the vessel in distress in favour of a second salvor, he should not forcibly resist, but should rely upon the Court's liberal recognition of these facts in dealing with his claim to salvage reward (*m*). In estimating the award to be given to the original salvor in such circumstances the Court will not be very careful to inquire whether the owner or master of the salvaged vessel acted rightly or wrongly in superseding the original salvor. In *The Maasdam* (*n*), the steamship *Winchester*, while proceeding to New York in ballast, fell in with the steamship *Maasdam*, laden with a general cargo and carrying 450 passengers, with her engines broken down in the Atlantic about 1,000 miles from Queenstown. At the *Maasdam's* request the *Winchester* stood by prepared to tow while repairs were being effected to the *Maasdam's* engines. On the completion of the repairs the *Maasdam* went easy ahead, the *Winchester* keeping near her. After a short time the engines of the *Maasdam* had again to be stopped, and the *Winchester* then got a rope on board of her, but, as she was proceeding to tow, the rope parted. Some hours afterwards, whilst the vessels were making fast again, the *P. Caland*, a steamship belonging to the owners of the *Maasdam*, came up, and the master of the *Maasdam*, in spite of some opposition on the part of the master of the *Winchester*, accepted the services of the *P. Caland*, and ultimately with the latter's aid the *Maasdam* was brought into a place of safety. Meanwhile the *Winchester*, after having stood by the *Maasdam* for thirty-four hours, proceeded on her way. Sir Francis Jeune, in estimating the award to be made to the *Winchester*, took into consideration the value of the services she was ready and able to perform, as well as the services which she actually rendered, though he expressly refrained from questioning the wisdom of the master of the *Maasdam* in preferring the services of the *P. Caland*. "I do not think," he said (*o*), "that it is a very important circumstance whether the vessel which refused the continued services did so rightly or wrongly. Stress

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by order of the owner or master of the vessel in distress will receive liberal treatment from the Court.

(*m*) See, for illustrations, *The Maude*, 3 Asp. M. L. C. 338, cited above, Chap. II. p. 44; and *The Maasdam*

(1893), 7 Asp. M. L. C. 400, cited in the text below.

(*n*) (1893) 7 Asp. M. L. C. 400

(*o*) *Ibid.* at p. 401.

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appeared to be put in one case mentioned to me (*p*) as to the duty of the vessel which was being salvaged. I think it was said that she ought not to have discarded the services of the original salvors. I do not think that is a question of importance. If a vessel which has been partially salvaged, for reasons of her own decides to have the salvage completed by another vessel, I do not know that she has not a perfect right to do so, subject of course to this, that in that case remuneration will have to be paid for the second probably, and certainly for the first."

Where the interference of a second set of salvors is right in the interest of the salvaged property, the exertions of the first salvors, if meritorious in character, will not go unrewarded.

Examples.

Where the dispossession of the first by a second salvor is deemed by the Court to have been necessary and proper, because there was no fair probability of the first salvor being able to bring the vessel into port in safety in due time, but the services of the first until such dispossession have been of a praiseworthy character, and he was willing to continue them, the Court, whilst treating the second salvor as the principal and efficient cause of the success, and therefore entitled to the larger share of salvage, will give a liberal share also to the first.

In February, 1852, the *Pickwick*, a ship of upwards of 400 tons, abandoned at sea in consequence of damage caused by a collision, was found about four miles from the Calf of Man by the schooner *Agnes*, of 75 tons. The *Agnes* put three out of her crew of six on board the *Pickwick*, and took her in tow, intending to make for Liverpool, the wind being then fair for that port. Half an hour later the *ss. President*, which had been chartered by the underwriters of the *Pickwick* and her cargo, came up, and her master took possession of the *Pickwick*, and in fourteen or fifteen hours towed her safely to Liverpool. The value of the salvaged property was 32,000*l.* The Court awarded 700*l.* to the owners, master, and crew of the *Agnes*, and 2,000*l.* to the owners, master, and crew of the *President*, the underwriters, who had chartered the *President* and had entered the suit on her behalf, being treated as the owners in regard to the salvage. In the course of his judgment Dr. Lushington said:—"Here is a schooner of 75 tons burthen manned with six persons, three of whom go on board the *Pickwick*, upwards of 400 tons burthen and laden with a valuable cargo, in the middle of February.

(*p*) *The Maude*, 3 Asp. M. L. C. 338.

Can any reasonable man come to the conclusion that there was anything like an appearance of safety under those circumstances? The only chance of the *Agnes* effecting the salvage was the continuance of a fair wind. Looking to the value of the property, 32,000*l.*, I think I can say that it was the duty of those on board the *President* to take the *Pickwick* into their own care and tow her to a place of safety. I say this without imputing the slightest blame to those on board the *Agnes*. . . . The remaining claim is that of the *President*, and she tows the vessel fourteen or fifteen hours. It must, however, be remembered that the *Agnes* was displaced solely on the plea of necessity, and unless that necessity was clearly established she would be entitled to be considered as sole salvor. It is rather a hardship for her, for she had a chance of performing the whole service" (g).

Chapter VII.

On the 12th April, 1861, the smack *Falcon* fell in with the *Magdalen*, derelict and bottom upwards, about fifteen miles south of the Eddystone. The *Falcon* took the *Magdalen* in tow, but after some hours, as it was found that she was not strong enough alone to tow her into port, the *Falcon* ran to Plymouth and returned to the *Magdalen* on the 15th with the ss. *Sir Walter Raleigh*. The steamer took the *Magdalen* in tow, but could do little owing to the violence of the sea, and returned to Plymouth on the 16th for additional assistance. On the 18th the steamer returned to the *Magdalen* and recommenced to tow her, but the weather became so bad that on the 19th the towage was stopped, and during the next night the *Falcon* and the *Sir Walter Raleigh* lost sight of her and had to run to Falmouth for shelter. On the 21st April H.M.S. *Bulldog* came up to the *Magdalen* and took her in tow, but, as she had another of H.M.'s ships also in tow for Devonport, and the weather was calm, she shortly afterwards cast off the *Magdalen* in order to tow the other ship to its destination. On the 22nd, the *Magdalen* was found by the *Falcon*, and another smack, the *Baron*, twenty miles to the south-west of the Lizard. The *Falcon* remained by the *Magdalen* during the night, showing lights; the *Baron* proceeded to Falmouth for assistance. On the morning of the 23rd, whilst

(g) *The Pickwick*, 16 Jur. 669.

Chapter VII. one of the *Falcon's* crew was on the *Magdalen*, the *Bulldog* again came up accompanied by H.M.'s sloop *Lightning*, and their commanders ordered the smack's man away, took possession of the *Magdalen*, and towed her into Falmouth. Two salvage suits were instituted, one on behalf of the *Sir Walter Raleigh* and the two smacks, and one on behalf of the *Bulldog* and the *Lightning*. The Court awarded to the first salvors 350*l.*, to include expenses, and to the second salvors (whose reward was lessened by reason of loss caused by mismanagement of the *Magdalen* in Falmouth harbour) 600*l.* Dr. Lushington expressly stated in his judgment that in his opinion it was impossible for the first salvors to have performed the service even if the *Sir Walter Raleigh* had come up in time to assist them on the second occasion (*r*).

The misconduct of one set of salvors affects the other set in reference to the award only if they can be connected in the misconduct.

The misconduct of one set of salvage claimants will affect the claim of another set only if the latter were connected with the first in the misconduct. Certainly, the mere fact that the innocent salvors have joined as co-plaintiffs in the salvage action with those who were guilty of misconduct will not affect them. In *The Neptune* (*s*), where a salvage suit was instituted by the owners, masters, and crews of the *Atalanta* and six other fishing smacks, the Court, in the first instance, dismissed the suit, holding that the crew of the *Atalanta*, who came first upon the scene, had in fact created the damage to the *Neptune* which was the foundation of the claim, by causing her to get upon the sand on which she grounded. After this judgment had been pronounced and during the sitting of the Court an application was made on behalf of the other smacks which had rendered assistance after the *Neptune* had got on the sand, it being alleged that they were in no degree implicated in the original misconduct of those on board the *Atalanta*. The Court found, as a fact, that they did not appear to have recognised in any degree the acts previously done on board the *Neptune* by the crew of the *Atalanta*, and awarded them 200*l.* and their costs, refusing to accede to the contention of counsel on behalf of the *Neptune* that, as they had joined in the suit with those interested in

(*r*) *The Magdalen*, 31 L. J. Adm. 22.

(*s*) 1 W. Rob. 297.

the *Atalanta*, they were bound by the judgment already pronounced. Chapter VII.

If, however, a salvor is guilty of misconduct, and any of his co-salvors recognise or are privy to his misconduct, there can be no doubt that it will affect their claim. Thus, in *The Scindia*, where the master of a salving ship had been guilty of misconduct in plundering the derelict which was saved, and the crew of the salving vessel, who knew of his misconduct, neither interfered to prevent it nor disclosed it, they as well as he were held by the Vice-Admiralty Court of Cape Town to have forfeited all claim to salvage (t). To the owners, however, of the salving vessel, the judge was disposed to hold that some reward should be allowed; and in *The Missouri's Cargo*, decided by Sprague, J., in the District Court of Massachusetts, in 1854, the misconduct of the master of the salving ship in conspiring, after the act of salvage, with the master of the ship carrying the saved cargo, to misappropriate a portion of it, which was afterwards recovered and proceeded against for salvage, was held not to affect the claim of the innocent owners of the salving ship (u).

Examples of such a connection in master and crew.

If a salvor dies before the Court adjudicates upon the salvage claim, the share to which he would have been entitled is secured to his personal representatives. Instances of this will be found in *The Marquis of Huntly* (x) and *The Anna Helena* (y).

The share of reward due to a deceased salvor is awarded to his personal representatives.

(t) 2 M. L. Cas. 232.

(x) 3 Hagg. 246.

(u) *The Missouri's Cargo*, 1 Sprague (Amer.), 260.

(y) 5 Asp. M. L. C. 142.

## CHAPTER VIII.

## OF CONTRIBUTION.

*Generally assessed upon all the interests benefited.*

*No distinction in assessment on account of different degrees of risk to which the subjects of the Salvage were respectively exposed, or of the degrees of difficulty with which they were respectively preserved.*

*Special circumstances under which, as between the owner of Cargo and the owner of Ship and Freight, the former may be entitled to exemption.*

*Apart from a Salvage Agreement, the owner of each interest is liable only for a contribution in respect of the value of that interest.*

*Under a Salvage Agreement, the Shipowner is liable for the whole amount of agreed reward.*

*The Principles of Assessment considered in detail :—*

1. *The Ship.*
2. *The Cargo.*
3. *The Freight.*

*Contribution in the case of the Salvage of Life.*

The general rule is, that all interests benefited by the salvage service contribute.

THE first general rule, as to the incidence of the burden of the salvor's claim upon the salvaged property (a), is, that every interest in that property which is benefited by the salvage service contributes to the salvage reward (b).

There are some exceptions.

There are some exceptions to this rule :—The wearing apparel and personal effects of the crew and the passengers on board the

(a) As to the salvage of life, see *Flores*, 3 W. Rob. 278, at p. 282; the judgment of the Privy Council, *The*

(b) See per Dr. Lushington, *The Fusilier*, Br. & L. 341, at p. 352.

salved vessel, as has been mentioned in a previous chapter, are exempted (c). Contribution cannot be required from the lender upon bottomry or respondentia (d). Chapter VIII.

It is, however, to be observed that the liability to the salvor's claim is not confined to the legal ownership of the salved property. In the case of *Five Steel Barges*, where the personal liability to the payment of salvage was resisted on the ground that the party whom it was sought to charge, and who undoubtedly was a gainer by the safety of the property salved, had not the legal ownership in it, Sir James Hannen refused to uphold the objection. "I think it (the liability to the payment of salvage) exists in cases where the defendant has an interest in the property saved, which interest has been saved by the fact that the property is brought into a position of security" (e). In *The Cargo ex Port Victor* (f) salvage was claimed from time-charterers of a ship in respect of stores shipped by the British Government under a contract with the charterers which made the latter responsible for the stores, subject to exceptions which did not include negligence. The salvage services were rendered necessary by a collision which was due to the negligence of the shipowner's servants. The Court of Appeal (Lord Alverstone, L. C. J., A. L. Smith, M. R., and Romer, L. J.), affirming the decision of Sir Francis Jeune, held that the charterers were liable to pay salvage reward. "I think," said Lord Alverstone, "that in a common maritime adventure of this kind at least the persons who have the interest of owners in the goods, by virtue of the contract they have made for the purpose of delivery, have an interest for the purpose of salvage" (g).

But it is not only in respect of a legal ownership that salvage is claimable.

It is the rule, in the next place, that each part of the salved property contributes rateably according to its value as salved. Difference in the degree of risk from which, or in the degree of difficulty with which, this or that portion of the salved property, The proportion of contribution due from each part of the salved pro-

(c) *The Willem III.*, L. R. 3 A. & E. 487. See above, Chapter III. Lord Kenyon, *Walpole v. Ewer*, Sitt. after Trin. Term, 1789.

(d) *Park, Mar. Ins.* 897—899, citing Lord Mansfield, *Joyce v. Williamson*, B. R. Mich. Term, 23 Geo. 3, and

(e) 15 P. D. 142, at p. 146.

(f) (1901) P. 243.

(g) *Ibid.* p. 255.



## Chapter VIII.

erty depends  
altogether  
upon its rela-  
tive value.

as compared with the rest of it, has been preserved (*h*), affords no ground of distinction in the rate of contribution. Thus, in *The Longford* (*i*), a case of salvage performed in the Mersey, part of the cargo on board the salvaged vessel consisted of specie, which could have been recovered without much difficulty even if the vessel had sunk; but Sir Robert Phillimore held that this fact did not entitle the owner of the specie to any lighter rate of contribution than that which had to be borne by the owners of other cargo which, from its nature, might have been lost or destroyed if the salvage service had not been rendered. Distinctions in the scale of contribution according to the different degrees of risk to which the various portions of the salvaged property were exposed, or according to the different degrees of difficulty involved in their preservation, would be not only exceedingly hard for the Court to adjust, but also, as Sir Christopher Robinson pointed out in his judgment in *The Vesta* (*k*), impolitic in the interest of commerce, because they might easily lead to mischievous preferences on the part of salvors in saving one part of the cargo before another. Dr. Lushington did, in one instance (*l*), whilst disapproving generally of such distinctions, except from this disapproval the case of silver and bullion. But Sir Robert Phillimore had this fact before him when he decided in *The Longford* (*m*) against any distinction; and Dr. Lushington's opinion in *The Emma* cannot now be treated as representing the law upon the point.

Cases in  
which, as  
between ship  
and freight  
on the one  
hand and  
cargo on the  
other, the  
cargo is  
entitled to ex-  
emption from  
contribution.

Whilst it is clear that salvors are, in general, entitled to salvage upon the values of both ship, cargo, and freight at risk (*n*), and may arrest the cargo in order to secure their claim to contribution from the freight (*o*), it is possible that, as between the owner of the ship and the freight on the one hand, and the owner of the cargo on the other, the latter may be entitled to require the whole burden of the payment of the

(*h*) See *Marvin, Wreck and Salvage*, Art. 162.

(*i*) 6 P. D. 60. See also *The Jonge Bastiaan*, 5 C. Rob. 324.

(*k*) 2 Hagg. 189, at p. 193.

(*l*) *The Emma*, 2 W. Rob. 315, at p. 319.

(*m*) 6 P. D. 60.

(*n*) See per Dr. Lushington, *The Fleece*, 2 W. Rob. 278, at p. 282.

(*o*) *The Lady Durham*, 3 Hagg. 196, at p. 300; *The Leo*, Lush. 444; Williams and Bruce, Adm. Pr. 3rd ed. p. 262, n. (*c*).

salvage remuneration to be borne by the former. This may Chapter VIII.  
arise in different ways.

First, where the owner of the cargo has not been actually benefited by the salvage service. (a) Where the cargo has not been benefited by the salvage service.

As the liability to bear a part of the cost of salvage depends, in principle, upon the acquisition of some advantage from the salvage service, the owner of salvaged cargo, as between himself and the owner of the salvaged ship, ought to be called upon to contribute to the salvage reward only if the salvage service has been actually beneficial to him. But, so far from obtaining a benefit from the salvage service, he incurs a loss, if the freight which the shipowner, who has been enabled by the service to carry the cargo to its destination, becomes thereby entitled to claim, exceeds in amount the value of the cargo. It would have been better pecuniarily for the owner of cargo that the salvors should not have come to the rescue, and the voyage should never have been completed. In such a case, therefore, the shipowner, who reaps all the advantage, must also bear all the cost of procuring it. This was decided by the Court of King's Bench in the case of *Cox v. May* (p). In that case, the material facts were, that the ship *Ramoncita* was chartered for a voyage out and home at a monthly freight payable in certain instalments, the last of which was to fall due three months after the arrival of the ship at London on the homeward voyage; that in the course of her homeward voyage, she was captured and re-captured; that, after the re-capture, she proceeded to her destination, and the ship and cargo were sold by consent of all the parties, the owner and the charterer having respectively claimed ship and goods in the Admiralty Court, where restitution was decreed them upon payment of salvage; that the plaintiffs, the assignees in bankruptcy of the shipowner, paid that proportion of the salvage and of the charges of establishing the claim to the salvaged property and procuring the decree of restitution, which was due in respect of the value of the ship, and the residue of these expenses and charges was paid out of the proceeds of the cargo of the defendants, the charterers; and that, an action being brought by the plaintiffs for an unpaid balance

(p) 4 Maule & Selwyn, 152.

Chapter VIII. of the chartered freight, the defendants claimed a set-off in respect of the moneys paid as above-mentioned out of the proceeds of the cargo. They contended, and, as to the amount of salvage proper (*q*), successfully contended, that, as the freight payable upon the completion of the voyage exceeded the value of the cargo, the salvage service which enabled the voyage to be completed was to them not advantageous, but, on the contrary, injurious; and, therefore, that the burden of the salvage reward ought to fall wholly upon the owners of the ship, who, being thereby enabled to earn freight which would otherwise have been lost to them, had alone been benefited by the re-capture. The figures, so far as they are material, as well as the grounds upon which the decision is based, sufficiently appear from the subjoined passage from the considered (*r*) judgment of the Court of King's Bench (Lord Ellenborough, C. J., Le Blanc, Bayley, and Dampier, JJ.) pronounced by Lord Ellenborough.

"The principle," said Lord Ellenborough, "upon which freight is to contribute in the case of general average is, that it was one of the things in hazard at the time when that sacrifice which produced the general average was made, and the principle upon which it contributes in the case of salvage is, that but for the re-capture, for which the salvage is paid, it would have been lost. Salvage is a compensation to the salvors, not merely for the restitution of the property which has been saved by them to the prior owners (for that is properly an act of mere justice on their part), but for the risk and hazard incurred by them, and for the beneficial service they have rendered the former owners in rescuing that property from the danger in which it was involved, and the persons to contribute to that salvage are the persons who would have borne the loss had there been no such rescue. To form a judgment who would have borne the loss had there been no rescue, and to whom the rescue was beneficial, we must look to the interest which each party had. The plaintiffs had an interest in the hull of the ship, as shipowners, to the extent of the value of the ship, and they also had an interest in the arrival of the ship at London to the extent of the

(*q*) For the charges of establishing the claim to the cargo and procuring the decree for its restitution the defen-

dants were held to be alone liable, and the set-off, to that extent, failed.

(*r*) The case had been twice argued.

freight, which would become due to them in that event, which was 16,145*l.* 13*s.* 7*d.*, and the defendants were interested in the goods to the amount of 14,351*l.* 18*s.* 2*d.*; but, as the ship's arrival would subject them to the payment of the 16,145*l.* 13*s.* 7*d.*, the loss by the capture would have been, on the whole, a beneficial event to them, and they, of course, derived no advantage, but, on the contrary, receive a prejudice by the event of the rescue. The salvage, therefore, though computed upon ship and cargo, ought to be borne wholly by ship and freight which is to be received by the shipowners, and the cargo ought to contribute nothing. It is very true that by this means the freight is made to bear that salvage which was paid to the re-captors in respect of the cargo saved, and the shipowner has a much higher salvage to pay than would have been the case had the ship returned in ballast; but as it was in the contemplation of all parties that the ship was to come home loaded, the shipowners have no right to complain of any consequence which results from what was so contemplated; and if the plaintiffs are alone benefited by the recapture, they must bear the whole amount of the salvage, whatever that may be."

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Secondly, the shipowner cannot look to the cargo-owner for any contribution to salvage where the occasion for the salvage service has arisen through a breach of contract or duty on the part of the shipowner himself, or of those for whose conduct he is responsible.

(b) Where the need of the salvage service has arisen from the fault of the shipowner or his servants.

An interesting case bearing upon this point is that of *The Ettrick* (s). The plaintiff's ss. *Ettrick*, with a cargo of wool belonging to the defendant on board, was sunk in the Thames by a collision, for which the plaintiff admitted his liability, and in an action for limitation of liability paid 8*l.* per ton into Court. The Thames Conservancy, under statutory powers, raised the ship and cargo, and gave them up to the plaintiff upon his reimbursing them for their expenses. The plaintiff delivered the wool to the defendant, and was paid the freight upon it; and he then sued the defendant for a rateable contribution towards the amount which he had been obliged to pay to the Thames

(s) 6 P. D. 127.

Chapter VIII. Conservancy. The raising of the wool had not added to the expense of raising the ship. It was held by Sir Robert Phillimore, whose judgment was affirmed by the Court of Appeal (Jessel, M. R., and Brett and Cotton, L. JJ.), that the plaintiff could not claim contribution, and that the limitation of his liability and his payment into Court of 8*l.* per ton did not affect the position. "If the plaintiff," said Brett, L. J., "had not been in any fault, I am inclined at present to think that he would have been entitled to claim from the defendant, if it was a general average contribution. But he has been in fault, and the authorities are decisive that, if the general average contribution which he claims is a general average contribution which arose by reason of a default of his, he cannot claim anything." Cotton, L. J., put the point of principle in these words: "It would be against equity to say that the person who has himself done the wrongful act which caused the expenditure shall claim thereupon from anybody else." Similar language in regard to the right to general average contribution occurs in the judgment of the Privy Council, in the case of *Strang, Steel & Co. v. Scott* (*t*). The matter there in dispute was the right to general average contribution in respect of a jettison rendered necessary by the negligent navigation of the carrying ship. "Where a person who would otherwise have been entitled to claim contribution has, by his own fault, occasioned the peril which mediately gave rise to the claim, it would be manifestly unjust to permit him to recover from those whose goods are saved, although they may be said, in a certain sense, to have benefited by the sacrifice of his property. In any question with them he is a wrongdoer, and, as such, under an obligation to use every means within his power to ward off or repair the natural consequences of his wrongful act. He cannot be permitted to claim either recompense for services rendered, or indemnity for losses sustained by him, in the endeavour to rescue property which was imperilled by his own tortious act, and which it was his duty to save. *Schloss v. Heriot* (*u*) is the leading English authority upon the point."

In such a case, if the owner of the

If the owner of cargo has been compelled to pay the salvor for services which have been rendered necessary by a breach of

(*t*) 14 App. Cas. 601, at p. 608.

(*u*) 14 C. B. (N. S.) 59.

contract or duty on the part of the shipowner or his servants, Chapter VIII. he is entitled to be indemnified by the shipowner in respect of this expenditure. In *The Princess Royal* (x), the facts alleged were that that vessel had been improperly injured, and then improperly abandoned at sea by her master; and the plaintiffs, the assignees of the bill of lading for goods on board of her, had been obliged, in order to get possession of their goods, to pay the amount of remuneration due to the persons who had salvaged her. They then proceeded *in rem* against the *Princess Royal*, in the Admiralty Court (under the 24 Vict. c. 10, s. 6), to recover the amount of the payment, as well as damages for delay of delivery, and Sir Robert Phillimore held that the action was maintainable.

cargo has been obliged to pay for salvage, he is entitled to recover the amount from the shipowner.

But it is only an actionable fault of the shipowner or his servants which bars a claim upon the owner of cargo for contribution to salvage. The claim can be maintained, although the salvor's service has been rendered necessary by the fault of the shipowner or his servants, provided that the shipowner is protected from responsibility for it by the terms of the bill of lading or other contract of carriage, and, therefore, the fault does not constitute an actionable breach of contract or duty. Whether the same is true as to claims for general average contribution might, until recently, have been open to question. The judgments in *The Ettrick* (*ubi sup.*), and in *Strang, Steel & Co. v. Scott* (*ubi sup.*), do not appear to treat the inability of the shipowner, whose fault has mediately occasioned a sacrifice or expenditure for the common good, to claim contribution from the owner of cargo as depending upon the actionable character of the fault; and in *Burton v. English* (y), the Court of Appeal decided that stipulations of a bill of lading not expressly referring to anything beyond liabilities under the bill of lading contract do not affect the rights of the parties in relation to general average contribution—rights which arise not out of contract at all, but from the ancient law of the ocean. The law, however, of general average upon this point seems to be settled by the judgment of Sir James Hannen in *The Carron*

His fault occasioning the salvage bars shipowner from claiming contribution only if it is an actionable fault.

(x) L. R. 3 A. & E. 41.

(y) 12 Q. B. D. 218, 220, 221.

**Chapter VIII.** *Park (z)*, which has been approved by the Court of Appeal (A. L. Smith and Romer, L. JJ., Vaughan Williams, L. J., *diss.*) in *Milburn & Co. v. Jamaica Fruit, &c. Co. (a)*. In *The Carron Park*, a vessel proceeded under a charter-party to a port of loading, and while there the cargo which she was taking on board was injured by sea-water negligently admitted into the ship by one of the engineers. The defendants, the shipowners, incurred expenses in discharging and warehousing the cargo and in pumping out the water. By the terms of the charter-party the defendants were exempted from liability for the negligence of their servants. The plaintiffs, the owners of the cargo, sued for breach of contract, and the defendants counter-claimed for a general average contribution. Sir James Hannen, in a considered judgment, held that the defendants were exempted from liability by the terms of the charter-party, and were entitled to recover on their counter-claim for general average contribution (*b*).

In salvage, the cargo is primarily, and equally with the ship, liable for payment of the reward. The shipowner who pays the cargo's share of it, is clearly entitled to reimbursement, unless, the need for the salvage having arisen from his actionable wrong, the owner of cargo has a good defence under the rule of avoiding circuity of action (*c*).

The ship-owner often pays the

In practice the shipowner frequently pays the whole of the salvage. He can do so safely, if either the cargo remains in his

(*z*) 15 P. D. 203. The judgment quotes a sentence of the judgment of the Privy Council in *Strang, Steel & Co. v. Scott*, to the effect that the right to general average contribution as between shipowner and cargo-owner may be varied by a special contract between them. Doubtless it may be. But the question is whether a contract in a charter-party or bill of lading, not, upon the face of it, referring at all to general average contribution, constitutes a special contract in respect of it. The judgments in *Burton v. English (ubi sup.)*, and the cases there cited (*Schmidt v. The Royal Mail Co.*, 45 L. J. Q. B. 646; *Crooks v. Allan*, 5 Q. B. D. 38), seem to be against such a view.

(*a*) (1900) 2 Q. B. 540. And see *The Mary Thomas*, (1894) P. 108, at p. 117.

(*b*) Cf. *The Irrawaddy*, (1898) 171 U. S. 187, where the decision in *The Carron Park* was, in effect, disapproved. And see Carver on Carriage by Sea, 4th ed., arts. 373*a*, 373*b*, 373*c*.

(*c*) The converse case of a salvage necessitated wholly by some fault in the cargo (as *e.g.*, by its inflammable nature), is possible, but it has never arisen for decision in the Court. It is presumed, however, that the shipowner could claim indemnity only if the fault gave him a cause of action. See Carver on Carriage by Sea, 4th ed., arts. 277—280.

possession, and he can therefore enforce his lien (*d*) for the proportion of the salvage payable by the owner of the cargo, or he gets from the owner of the cargo proper security for the payment of that proportion.

Chapter VIII.  
whole salvage  
in the first  
instance.

But the salvor must always bear in mind that, in the absence of a salvage agreement by which the shipowner is bound to pay all the salvage, and which will be considered presently, the interests in ship and in cargo are only severally liable, each for its proportionate share of the salvage remuneration. If one who has salvaged both ship and cargo brings before the Court in his salvage action only the ship, or only the cargo, he will get judgment only for such an amount of reward as the Court finds to be due in respect of the value of that property which is before the Court (*e*).

But, generally, each part of the salvaged property is liable only for the proportion of the salvage properly falling upon that part.

In *The Mary Pleasants* (*f*), where salvage services had been rendered to the vessel herself and to the cargo on board of her, the salvors proceeded against the ship (valued at 4,247*l.*) alone. No precise evidence was given as to the value of the cargo. In the course of his judgment (*g*), Dr. Lushington said:—"But the real difficulty is, that there is no proceeding against the cargo. The vessel is English, and was in the service of the French Government. She was laden with a cargo consisting of articles which, from the statement of the master, must have been of very considerable value. The difficulty, I say, arises from this circumstance, because when the Court considers the services rendered to the ship and cargo, it always estimates the amount of salvage remuneration according to the value of the ship and cargo taken together. It is contrary to all principles

Examples.

(*d*) See *Briggs v. The Merchant Traders, &c. Association*, 13 Q. B. 167; *Hingson v. Wendt*, 1 Q. B. D. 367; per Butt, J., *The Prinz Heinrich*, 13 P. D. 31, at p. 34.

(*e*) In Scotland the Court of Session has held a salvor entitled to sue the owners of the salvaged ship personally for reward in respect of the cargo as well as the ship, if the shipowner, by the terms of the contract of carriage, would have been liable to the owner of

the cargo for any loss arising from the peril from which it has been preserved by the salvage service. *Duncan v. Dundee, &c. Shipping Co.*, Scotch Sess. Cas. 4th Series, vol. 5, p. 472.

(*f*) Swab. 224. And see per Sir F. Jeune, *The Elton*, (1891) P. 265, at pp. 270, 271. For a case of salvaged cargo which was not before the Court in the salvage action, see *The Erato*, 9 P. D. 182.

(*g*) Swab. p. 225.



Chapter VIII. of justice, if a cargo has received and been benefited by the services so rendered, that the whole burden of the salvage remuneration should fall on the ship itself. I know not, in this case, the value of the cargo, and, consequently, the Court is put in a situation of some difficulty in forming an estimate of the compensation which should be given. Looking at all the circumstances of this case, I am of opinion—not attempting to place any definite value on the cargo—that I should not be justified in imposing on the ship a greater burden than 600*l.*, with costs.”

In *The Pyrenée* (*h*), where the proceeds of the sale of the ship alone were in Court, Dr. Lushington refused an application of the salvors for payment out to them of the lump sum which the justices had awarded them for salvage against ship, freight, and cargo.

In *The Raisby* (*i*), a case in which the master of the salvaged ship had delivered the cargo to consignees in a foreign port without requiring from them security for salvage in respect of the cargo, it was argued on behalf of the salvors, who prosecuted an action *in personam* against the owners of the ship, that this conduct constituted an actionable breach of duty towards them, and that they were entitled to recover from the defendants the amount of salvage chargeable to the cargo. Sir James Hannen declined to accede to this contention, and observed, upon the general question of the liability of the ship for the share of the salvage chargeable to the cargo, that it seemed to him to be clear that no primary liability rests upon the ship or its owners to pay for the salvage of the cargo.

If there is an agreement for a definite sum between the salvors and the master of the salvaged ship, the owner's liability is pledged for the whole salvage.

The case is different where the salvors and the master of the salvaged vessel have entered into a valid salvage agreement which fixes the amount of the reward. The master, in making it, is the shipowners' agent, and must be taken to pledge their liability and credit. They, therefore, may be sued, either personally or through an action *in rem* against the ship, for the whole sum which is due under the agreement, and not merely for that portion of the sum which, as between

(*h*) Br. & L. 189.

(*i*) 10 P. D. 114.

ship, freight, and cargo, would be contributed by the ship and freight (k). Chapter VIII.

It is now proper to consider the way in which the values of the several contributory interests, ship, freight, and cargo, have to be calculated for the purposes of salvage (l). How the salvage values are assessed.

"In most cases," said Dr. Lushington, in *The Norma* (m), "the value of the property salvaged is agreed upon; if it is not, the exact value is not important, and the usual practice has been to assess the value at the termination of the voyage, the port of arrest" (n). But, undoubtedly, the correct principle is to assess the value of the property, as salvaged, at the place (whether the port of destination or not) where, and at the time when, the salvage service terminates (o). The question to be determined is: When and where was the salvaged property brought into a position of safety? The value of the salvaged property at that time and place should be the value on which salvage is to be awarded. In the case of *The Germania* (p), a steam trawler fell in with the ss. *Germania*, lying disabled in the North Sea, and towed her to a position off Aberdeen, where, as the master of the trawler was unwilling in the bad weather then prevailing to incur the risk of taking her into the harbour, signals were made for a pilot and a tug. In response to the signals a tug came up, and her master offered to pilot and tow the *Germania* into the harbour; but his services were—improperly, as the Court found—not accepted, and subsequently the trawler was told to go ahead. As the trawler was in the act of going ahead the hawser parted. The *Germania* then dropped anchor, Should be at the place where the salvage service terminates. But not always so in practice.

(k) See *The Cumbrian*, 6 Asp. M. L. C. 151; *The Prinz Heinrich*, 13 P. D. 31.

(l) If the salvaged property is arrested, the salvors are entitled to have the values appraised by the marshal of the Court of Admiralty, but at the risk of their having to bear the cost, if the appraised values do not substantially exceed the values stated by the owners. See Williams & Bruce, Adm. Pr. 3rd ed. pp. 313—315, and cases there referred to.

(m) Lush. 124, at p. 127.

(n) See Carver, Carriage by Sea, 4th ed., arts. 351, 352.

(o) See *The George Dean*, Swab. 290; *The Norma*, Lush. 124; *The Cargo ex Loodianah*, No. 1403, 21st April, 1863, Pritch. Adm. Dig. 3rd ed. (1887), vol. 2, p. 1854; *The Stella*, L. R. 1 A. & E. 340; *The Georg*, (1894) P. 330, p. 334; *The Germania*, (1904) P. 131; *The Clara*, Shipp. Gaz. Nov. 22, 1905. (p) (1904) P. 131.

**Chapter VIII.** and steps were taken to make the trawler fast again, but before this could be done the *Germania* drifted ashore. The cost of floating her amounted to 1,150*l.*, and an expenditure of 5,600*l.* was rendered necessary for repairs. In an action of salvage on behalf of the trawler, Barnes, J., rejecting the contention that for the purposes of an award the value of the *Germania* ought to be taken at the amount which she ultimately proved to be worth, viz., 1,750*l.*, held that, the *Germania* having been brought into a position of safety when she was brought within reach of the tug, her value at that time, namely, 8,500*l.*, was the basis on which the award ought to be calculated.

The Court, in assessing the value of the salvaged property for the purposes of a salvage claim, will take into consideration the fact that a sum of money has been ordered by another Court of competent jurisdiction to be paid to other salvors out of the proceeds of the salvaged property (*q*).

The value of ship.  
What deductions will be allowed.

The value of the ship is her value to her owners in her damaged condition (*r*). In arriving at the value, the rule is to allow deductions only in respect of such charges and expenses falling upon the owners in connection with it as have arisen subsequently to the inception of the salvor's interest, and can fairly be treated as beneficial to that interest.

Thus, the amount of a bottomry bond taken up by the salvors on the voyage home for the purposes of the voyage has been allowed as a deduction from the value of the ship (*s*). So have wages of the crew earned after the commencement of the salvage service (*s*). And where the salvors of a derelict had been obliged to beach her at Eastbourne, and, after being lightened by the unloading of her cargo, she had been brought round to Portsmouth, the Court of Admiralty held that the expenses of the unloading of the cargo, as well as the expenses

(*q*) *The Antelope*, L. R. 4 A. & E. 33. And see *The Harmonides*, (1903) P. 1.  
(*s*) *The Selina*, 2 Notes of Cases, 16, at p. 18.  
(*r*) *The Hohenzollern*, (1906) P. 339.

of bringing the vessel to Portsmouth, ought to be allowed for in assessing the value of the salvaged property (*t*). But a claim for allowance in respect of the amount of a bottomry bond taken up by the master of the salvaged ship (*u*), or in respect of wages of the crew earned (*x*), before the salvage service, would not be admitted. In *The Fleece* (*y*), the owners unsuccessfully sought a deduction from the value of the salvaged ship in respect of costs incurred by them in prosecuting certain wreckers who had forcibly dispossessed the claimants of salvage. Chapter VIII.

In the valuation of the cargo, the Court will allow a deduction for all proper and customary expenses involved in the unloading, storage, and sale of the goods, such as custom-house charges, weighing, brokerage, and commission (*z*), and for the usual trade discount on sale (*a*); but not for a gratuity to the master of the carrying ship (*b*), or for primage (*c*), or for insurance (*d*), or for prepaid freight (*e*). If freight at risk is saved by the salvage service, and therefore has to contribute to the payment for it, it may either be included in the valuation of the cargo, or it may be deducted from the value of the cargo, and treated as a separate and distinct item. It makes no practical difference, so far as regards the owner of the cargo, whether the one course or the other is adopted. If, after paying the freight which was at risk when the salvage service was rendered, he is compelled to pay to the salvors the whole of the amount assessed upon the cargo, including the freight, he will be entitled then to recover from the shipowner so much of that amount as he has paid for salvage which the owner of the freight ought to bear. If he has not paid the freight, but has paid the salvage falling on the cargo and freight assessed together, he will be entitled, when the shipowner afterwards claims payment of freight, to deduct and keep back, out of the freight, the

**The value of cargo.**

What deductions are allowed from gross value.

It is immaterial whether freight at risk is assessed separately or included in value of cargo.

(*t*) *The Watt*, 2 W. Rob. 71. And see *The Clara*, Shipp. Gaz. 22nd Nov. 1905.

(*u*) *The Hebe* (Irish), 7 Notes of Cases, Supp. i. at p. iii.

(*x*) *The Selina*, *ubi sup.* See also *The Sabina*, 7 Jur. 182.

(*y*) 3 W. Rob. 278, at p. 281.

(*z*) *The Peace*, Swab. 115, at p. 116.

(*a*) *Ibid.*

(*b*) *Ibid.*

(*c*) *The Charlotte Wylie*, 2 W. Rob. 495, at p. 497; *The Fleece*, 3 W. Rob. 278, at p. 282.

(*d*) *Ibid.*

(*e*) *The Fleece*, 3 W. Rob. 278, at p. 282.

Chapter VIII. amount which he has paid for the salvage properly chargeable to freight (f).

How valuation of cargo should be made when salvors' services terminate at a port of refuge.

Where the salvage service terminates at the ship's port of destination, there cannot ordinarily be any difficulty in arriving at the contributory value of the cargo. There can be but little, except perhaps in regard to the settlement of the freight, where the salvage terminates at a place at which, though it is not the port of destination, there is a market for the cargo. But the assessment of the value of the cargo may be a matter of some intricacy and doubt, where, as sometimes happens, the salvors convey the cargo to a place which is not the port of destination, and which has no market for the cargo. The proper method of getting at the value in such a case, if the cargo is ultimately forwarded on to its destination and sold there, was stated by Dr. Lushington in *The George Dean* (g). In that case, the *George Dean*, laden with palm oil and bound from Mauritius to London, had been picked up by salvors in a derelict condition, and had been taken by them to Lisbon. There was no market at Lisbon for a cargo of this description, and it was therefore transhipped, taken to London, and there sold. After deciding that, on principle, the salvors were entitled, as against the cargo, to salvage on its value at Lisbon, where the salvage service had ended, and not on its value in London, the judgment proceeds thus:—"I hope to be able to settle this question [the value of the cargo] at once by taking some agreed value on which to decree salvage. If this cannot be done, and a reference to the registrar and merchants becomes necessary, I imagine the strict method to arrive at the value of the cargo at Lisbon would be not on any assertion of its being unsaleable there, but by putting it at [between?] 7l. and 8l. per cent. less than the proceeds of its sale in London, deducting freight and other charges for the voyage from Lisbon to London, but allowing a *pro rata* freight as far as Lisbon."

Where the cargo is not carried to its destination.

If the cargo, having been carried by the salvors to a place where there is no market for it, has not been carried on to the

(f) *The Charlotte Wylie*, 2 W. Rob. 495, at p. 497; *The Fleece*, 3 W. Rob. 278, at p. 282; and cf. *The West-*

*minster*, 1 W. Rob. 229, at p. 233; *Cox v. May*, 4 M. & S. 152.

(g) *Swabey*, 290, at p. 291; and see *The Georg*, (1894) P. 330, at p. 334.

port of destination at the time when the value of the cargo has to be ascertained for the purposes of the salvage action, the proper course, on the principle of the assessment laid down in the last-cited case, would seem to be to take its value at the nearest and most convenient market, less an allowance for its transport thither, and for the expenses which would properly be incurred in putting it upon that market.

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If, after an award based upon values furnished by the owners of ship, freight, and cargo respectively, it is discovered that an error has been made in the calculations, such as, for example, that the owner of the cargo, owing to a miscalculation on his part, has been ordered to contribute upon the value of the cargo without deducting the freight due upon delivery, and the freight has been separately assessed at too low a figure, the Court may remodel its decree, reduce the amount of salvage, and vary the proportions payable by the respective owners (*h*). The Court, however, will not readjust its award merely because the selling price of the property has proved to be lower than the assessed value, if no objection was taken at the hearing, and there is no evidence to show that the assessment did not fairly represent the value at the time and place where the property was brought into safety (*i*). And generally the power of the Court to alter an award will be exercised with great caution. Alteration of an award practically requires a re-hearing of the merits of the case; and the expense and inconvenience which result therefrom render it desirable that no encouragement should be given to applications for such purpose (*k*).

The Court may, even after a decree in a salvage suit, reconsider the amount of the award and the amounts upon which the contributory values are to be assessed.

In regard to the freight, if the salvor's services continue until the salvaged cargo upon which it is chargeable reaches the port of

The value of freight.

(*h*) *The James Armstrong*, 3 Asp. M. L. C. 46.

(*i*) See *The Georg*, (1894) P. 330. There an award of 1,500*l.* was made upon an appraised value of the ship of 1,250*l.*, and of her cargo of 5,001*l.*, making together 6,251*l.* On a sale by the marshal the ship realised 713*l.* and the cargo 1,649*l.*, and the total, 2,362*l.*, was reduced by fees and expenses to

1,625*l.* Two other awards made in separate actions in respect of the same services increased the total salvage claims to 1,730*l.*, which more than absorbed the whole of the net proceeds of sale. But the Court refused to readjust its award. Cf. also *The Cargo ex Venus*, L. R. 1 A. & E. 50.

(*k*) See *The Georg*, *ubi sup.* at pp. 333, 335.

**Chapter VIII.** destination, he is, of course, entitled to have valued as a contributory interest the whole nett freight which was unpaid and at risk at the time of the service, and was preserved by the service for the shipowner. As has been already pointed out, it is immaterial whether it is valued separately, or is included in the valuation of the cargo. In neither case ought there to be any difficulty in the calculation.

As to salvor's right to have freight assessed for contribution to salvage where his services terminate at port short of port of destination.

If, however, the salvage service terminates at a port which is not the port of destination, it will depend upon circumstances whether there is a freight against which the salvor can claim or not. If the cargo salvaged is not carried on, by transshipment or other means, to its destination, no freight at all is earned, unless the reason why the cargo is not carried on is that its owner has either himself prevented the shipowner from carrying on the cargo and completely performing the contract of affreightment, or, having the choice, has preferred to take delivery of the cargo where it is (*l*). In each of these last cases, there is a freight due to the shipowner; in the first event, the whole freight (*m*); in the second, either the whole (*n*) or a *pro rata* freight (*o*), according to the terms of the new agreement, which is to be implied from the circumstances of the delivery (*p*).

Where goods are carried on to port of destination from the intermediate place where the salvor's services terminated.

If, on the other hand, the cargo is carried on from the port where the salvor's services end to its destination, the shipowner, upon the completion of the voyage and the delivery of the cargo, is entitled to the whole of the stipulated freight which was at risk when the salvage service was rendered; but still, according to the doctrine of the common law, as freight is not apportionable, no part of the freight could be said to have been earned at the port of refuge, where

(*l*) See Carver, Carriage by Sea, 4th ed., arts. 307, 542—563; and cf. *Hunter v. Prinsep*, 10 East, 378; *Vlierboom v. Chapman*, 13 M. & W. 230; *Hopper v. Burness*, 1 C. P. D. 137; *Metcalfe v. The Britannia Ironworks* (C. A.), 2 Q. B. D. 423.

(*m*) See *The Cargo ex Galam*, 33 L. J.

Adm. 97.

(*n*) *Christy v. Row*, 1 Taunt. 298.

(*o*) *Mitchell v. Darthez*, 2 Bing. N. C. 555; *The Soblonsten*, L. R. 1 A. & E. 293.

(*p*) See Carver, Carriage by Sea, 4th ed., arts. 557 and 599.

the salvor's services ended, and where the values assessable to the contribution to salvage have to be calculated. But here, in order to prevent an injustice to the salvor whose services have, in some measure at least, benefited the shipowner in respect of his freight, by preserving, as far, at least, as the port of refuge, the property upon the safety of which the possibility of his earning freight depends, the Court of Admiralty departs from the common law doctrine, and, "according to the large equity of Admiralty law" (q), concedes to the salvor who brings ship and cargo into safety at a port of refuge, the right to salvage upon a freight estimated, as well as it may be, for the portion of the voyage accomplished at that point. The leading case on the subject is *The Norma* (r).

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The *Norma* was on a voyage from Honduras to England, and, becoming disabled, was towed by salvors to Bermuda. There she was, at great cost, refitted, and afterwards carried her cargo to England. The gross freight did not much, if at all, exceed the expense of the refit at Bermuda, the wages there and thence home and the port charges in England. The salvors in their action for salvage claimed upon the whole gross freight. The ship-owners, on the other hand, contended, first, that on principle the plaintiffs could have no claim against freight, because the values assessable to salvage were the values at Bermuda, and no freight was due or payable there; and, secondly, that, even if the plaintiffs would otherwise have been entitled to salvage on an estimated freight to Bermuda, yet as that only formed part of a total freight, which, if properly calculated, was swallowed up by the expenses of earning it, the claim as to freight must fail.

The principle laid down in *The Norma*.

In delivering judgment Dr. Lushington said (s):—

"Now it is certainly quite true that at Bermuda, as between the owner of the ship and the shipper of goods, no freight was earned. But I do not think that this is at all conclusive against the salvors. It is quite necessary, as the Queen's Advocate has observed, in order to hold persons to their engagements, to require, where a contract is entire in its nature, entire perform-

(q) Per Brett, M. R., *The City of Chester*, 9 P. D. 182, at p. 187.

(r) Lush. 124.

(s) *Ibid.* p. 127.



Chapter VIII.   ance as a condition precedent to any right of payment; the contract of freight is emphatically a contract of this kind, and freight, therefore, is not properly earned (except under circumstances implying a new contract) until the cargo is delivered at the port of destination. But in salvage we have to decide on purely equitable principles, and the question here is not so much what freight was earned at Bermuda, but what services in respect of the contract for freight the salvors had then rendered. Judging by this test, the salvors are entitled to salvage upon a considerable part of the total freight; for it is clear that a large portion of the voyage had been performed before the salvage services, and that the entire benefit of so much was preserved to the shipowners by the salvors, not indeed absolutely, for expenses had to be incurred, and the perils of the voyage from Bermuda home had yet to be undergone, but preserved from immediate and total loss. I do not think it necessary to enter into detailed calculation upon this question of the value of the salvor's services to freight, how far the Bermuda expenses are to be taken into account, what items are proper items of deduction, and so on; my judgment must after all be a *rusticum judicium*. It is enough to say that the services of the salvors in respect to freight were considerable. I shall reckon the value of the freight saved at 1,000*l*." (*t*).

The freight is to be calculated *pro ratâ itineris peracti*, but not without regard to the expenses involved in the further transit.

It may be worth while to point out, although, perhaps, the language of this judgment makes the observation superfluous, that the salvor, whose services terminate at a port of refuge, cannot claim to have a value put upon the freight for the carriage of the goods up to that point simply *pro ratâ itineris peracti*, and without regard to the expenses which the completion of the shipowner's contract of affreightment involves, and which he is obliged to incur in order that he may become entitled to any freight at all. It would plainly be impossible to lay down any general rule as to the extent to which such considerations ought to affect the value to be put upon the

(*t*) Cf. *The Dorothy Foster*, 6 C. Rob. 88; *The Progress*, Edw. 210 (cited in the judgment of the C. A., *SS. Carisbrook Co. v. London, &c. Ins. Co.*, (1902) 2 K. B. 681, at p. 688).

salvor's services to freight in cases of this nature; and in *The Norma*, Dr. Lushington expressly held that any attempt at nice calculations of them was unnecessary. But they must always constitute an element in the estimate. In *The James Armstrong* the destination of the cargo was London, and the salvor's services terminated in Scilly, whence the cargo was afterwards transhipped to London. For the purpose of estimating the figure at which the freight should be put in the salvage action, the registrar and merchants took the freight payable in London and subtracted from it the expenses attending the transhipment in Scilly and the conveyance of it thence to London. Then, to the sum of 813*l.* 0*s.* 5*d.*, which was the result of this subtraction, they added an estimated sum which brought up the total to 1,000*l.*, because they held that, since the termination of the salvage services, there had been great delay (which would of course involve expense) in the transhipment and conveyance to London. Sir Robert Phillimore, in his judgment, approved and adopted this method of calculation (u).

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How calculated in *The James Armstrong*.

In the case of the salvage of derelict there may be no freight against which the salvor can claim.

Of freight in the case of the salvage of derelict.

It was decided by the Court of Appeal (Brett, M. R., Cotton and Lindley, L. J.J.) in *The Cito (x)*, affirming the judgment of Sir Robert Phillimore (y), that, where a derelict is brought by salvors into a port which is not her port of destination, the persons interested in the cargo are entitled to an order of the Court for delivery of the cargo without payment of any freight, if they come forward to claim the delivery before the shipowner has taken steps to carry it on in accordance with his freight contract. The Court refrained from saying what would have been ruled if, after the ship had been brought into port by the salvor, and before the owner of cargo had intervened and claimed his right to the cargo, the shipowner had given bail for the ship and cargo, and had proceeded with the carriage of the cargo to its destination.

(u) 3 Asp. M. L. C. 46, at p. 49.

(x) 7 P. D. 5.

(y) The learned judge had previously decided in the same way in *The Kathleen*, L. R. 4 A. & E. 269.

Chapter VIII. In *The Argonaut* (s), the Court of Appeal (Brett, M. R., Lindley, L. J.) further decided (reversing the judgment of Sir James Hannen) that if the owners of the cargo on board a derelict have applied for delivery of it at the port to which the salvor brought the derelict, and offered bail for its value, and the Court has ordered the ship to proceed with the cargo to the port of destination, not only, as was decided in *The Cito*, is no *pro rata* freight due for carriage of the cargo to the port at which the salvage service terminated, but the owners of the cargo are not liable for the expenses of carriage onward to the port of destination, or for the expenses of delivery there.

In *The Leptir* (a) Butt, J., held, upon the facts there proved, that the salvaged vessel was not derelict, and adjudged that the owners of cargo who claimed its delivery at the port of refuge to which the salvors had taken it were bound to pay a *pro rata* freight, the amount of which he directed the registrar and merchants to ascertain.

Lastly, in *The Arno* (b), the Court of Appeal (Lord Esher, M. R., Kay and A. L. Smith, L. JJ.), affirming the judgment of Bruce, J., held that where a vessel is abandoned by her master and crew during a voyage, and the cargo-owner exercises his right of treating the abandonment as a determination of the contract of affreightment, the subsequent recovery of the vessel by the shipowner from salvors at the port of discharge will not revive the contract; so that the owner of the cargo will be entitled to have it delivered to him without payment of freight.

It remains still to be decided whether the shipowner, if he regains possession of the vessel before the cargo owner has elected to treat the contract of affreightment as ended, can resume the contract without any fresh agreement.

Of contribution in case of the salvage of life.

There is still left for mention the case of the salvage of life.

To the payment of those who are entitled to reward for the salvage of life, under the provisions of the Merchant Shipping

(s) Shipp. Gaz. Weekly Summary, 3rd Dec. 1884.

(a) 5 Asp. M. L. C. 411.

(b) (1895), 8 Asp. M. L. C. 5. And see *Guthrie v. North China Ins. Co., Ltd.* (1900), 6 Com. Cas. 25; (C. A.) 7 Com. Cas. 130.

Act, 1894 (c), ss. 544—546, ship, cargo, and freight, so far as Chapter VIII. they have been preserved, contribute rateably, and it is now immaterial, as has been noticed in an earlier Chapter (d), whether these interests have been preserved by the exertions of the same persons who saved life, or by other salvors, or without any salvage assistance (e).

(c) 57 & 58 Vict. c. 60.

(d) Ch. III. p. 67.

(e) In *The William Tillis*, Shipp. Gaz., May 7th, 1901, an application was made by underwriters of the salved vessel for apportionment of the

award in respect of the saving of the lives of the crew apart from the salvage of the vessel. The Court rejected the application on the ground that it did not raise a question affecting the salvors.

## CHAPTER IX.

### OF AGREEMENTS RELATING TO SALVAGE.

*Two kinds of such Agreements :—*

**A. Agreements fixing the amount of the Salvage Remuneration—**  
*Do not affect the character of the Service.*

*Must be strictly proved.*

*If proved in fact, can be set aside only on one or other of four grounds : viz., (a) fraud, (b) mis-statement, or non-disclosure of a material fact, (c) inequitable character, or (d) cancellation by mutual consent.*

*The burden of proof in each case lies upon those who seek to impeach the validity of the Agreement.*

*The grounds of invalidity separately considered.*

*The Agreement does not bar a further Salvage claim if its performance becomes impossible, and services of a different nature or class have been rendered by the Salvors.*

*How far Salvage Agreements not made by them are binding upon—*

(1) *The Owners of the Vessel and the Cargo Saved ;*

(2) *Parties interested as Salvors in the reward of the Salvage enterprise.*

**B.—Agreements for the apportionment of Salvage Remuneration.**  
*Generally upheld unless they appear inequitable.*

*Special protection of Seamen against improvident and unfair Agreements.*

*Statutory enactments as to Agreements of Seamen to forego any Share in Salvage Reward.*

*How far the Court, in apportioning Salvage, will regard usages of a particular place or occupation.*

THERE are two sorts of agreement relating to salvage which it is necessary to consider :— Chapter IX.

- A. Agreements between the salvor and the owner of the property salvaged, or his agent, as to the amount to be paid for the salvage service.
- B. Agreements of salvors *inter se* as to the apportionment of the salvage remuneration.

Two kinds of agreement affecting salvage.

A salvage agreement, properly so called, is an agreement which fixes the amount to be paid to the salvor for his assistance, but still leaves the right to any payment contingent upon the preservation of some part at least of the property in peril (*a*). Such an agreement does not alter the character of the service or of the reward. The law, identical on this point here and in America, is thus stated by Story, J., in *The Emulous* (*b*). "If it [the salvage service] has been rendered under circumstances which establish that the parties have voluntarily, and without any controlling necessity on the side of the proprietors of the property saved, or their agents, entered into a contract for a fixed compensation, or upon the ordinary terms of a compensation for labour and services *quantum meruerunt*; in either case it does not alter the nature of the service as a salvage service, but only fixes the rule, by which the Court is to be governed in awarding the compensation. It is still a salvage contract, and a salvage compensation" (*c*).

A. AGREEMENTS FIXING THE REWARD.

Do not alter character of salvage service.

Inasmuch as the effect of a valid agreement, while it does not alter the nature of the service, is to shut out the parties concerned from recourse to the judgment of the Court of Admiralty upon the merits of the case, that tribunal, in case of dispute, always insists upon the clearest proof of the allegation that such an agreement has been made. "I need scarcely observe that the proof of the alleged agreement which has been set up rests with the party who has set it up; and that the proof must be clear in order to induce the Court to depart from the ordi-

The agreement must be strictly proved.

(*a*) See on this above, Chapter II. pp. 47—49. 499.

(*b*) 1 Sumn. (Amer.) 207, at p. 210. See also *The Susan*, Sprague (Amer.),

(*c*) See to the like effect, Dr. Lushington, *The William Lushington*, 7 Notes of Cases, 361, at p. 362.

**Chapter IX.** nary principles of adjudication and introduce the agreement itself" (d). The agreement need not be in writing (e), but it must be clear and explicit. It must state clearly the services to be rendered and the sum to be paid for them (f). A mere agreement to refer to arbitration is no bar to the jurisdiction of the Court (g).

When it is proved, the burden lies on the party who seeks to set it aside.

When the Court is satisfied that such an agreement has been made, and the parties to it appear to have been competent to contract, the burden of proof is shifted upon those who seek to invalidate it. "When the execution of such an instrument is once proved, it is *prima facie* binding, and the burden of proof falls upon those who dispute the validity of the instrument" (h).

The grounds on which a salvage agreement may be avoided.

The agreement, though otherwise sufficient, may be avoided on any one of the following grounds (i) :—

- (a) That it is tainted with fraud ;
- (b) That the salvors were induced to enter into it by the misstatement or non-disclosure, even though not fraudulent, of a material fact ;

(d) Per Dr. Lushington, *The Graces*, 2 W. Rob. 294, at p. 297. Cf. also, *The Resultatet*, 17 Jur. 353, at p. 354 ; *The Arthur*, 6 L. T. (N. S.) 556, at p. 557 ; *The Salacia*, 2 Hagg. 262, at p. 265 ; *The Charlotte*, 3 W. Rob. 68, at pp. 73, 74.

(e) See *The Graces*, *ubi sup.* ; *The Arthur*, 6 L. T. (N. S.) 556, at p. 558 ; *The Cumbrian*, 6 Asp. M. L. C. 551 ; *The Firefly*, Swab. 240.

(f) See per Dr. Lushington, *The William Lushington*, 7 Notes of Cases, 361, at p. 363.

(g) *La Purissima Concepcion*, 13 Jur. 545. And see *The City of Calcutta*, 8 Asp. M. L. C. 443.

(h) Per Dr. Lushington, *The Helen and George*, Swab. 368, at p. 369 ; and see also *The Betsey*, 2 W. Rob. 167, at p. 170 ; per Brett, J. A., *The Medina*, 2 P. D. 5, at p. 7 ; *Akerblom v. Price*, 7 Q. B. D. 129, at pp. 132, 133 ; per

Brown, J., *The Elfrida*, 172, U. S. Rep. 186, at p. 196. In the earlier case of *The British Empire*, 6 Jur. 608, there is a dictum which casts the burden of proving the justice as well as the fact of an agreement upon those who set it up.

(i) Cf. per Brown, J., *The Elfrida* (1898), 172 U. S. Rep. 186, at p. 192 : "Such contracts will not be set aside unless corruptly entered into, or made under fraudulent representation, a clear mistake, or suppression of important facts, in immediate danger to the ship, or under other circumstances amounting to compulsion, or when their enforcement would be contrary to equity and good conscience." In *The Repulse*, 2 W. Rob. 396, at p. 397, Dr. Lushington says, incorrectly, that salvage agreements can be annulled only on the grounds of fraud and misrepresentation or a cancellation by consent.

- (c) That the terms of the agreement are inequitable ;
- (d) That the agreement has been cancelled by consent of the parties.

It will be convenient to consider these grounds separately.

*Fraud (k).*

In the case of *The Crus V. (l)*, the agents of the master of the salved vessel agreed with the salvors for 600% as salvage reward, bargaining at the same time for a return to them of 50%, out of which they were to keep 40% for themselves and to pay 10% to the master of the tug. The Court judged the agreement to be corrupt, and upheld a tender of 250%.

In *The Generous (m)*, which was a case on appeal from the justices of Yarmouth, the Court found that the master of the salving vessel had been bribed to sign the salvage agreement by a promise of 10% for himself, and held that on that account the justices had erred in sustaining the agreement as against the owners of the *Generous*.

The Court would, doubtless, treat as fraudulent an agreement whereby the master of a vessel in distress, with a cargo on board, bargained for the salvage of the vessel herself and not of the cargo (n).

*Mis-statement or non-disclosure of a material fact.*

The Court will treat as material any fact in or relating to the property for which salvage assistance is sought, if that fact affects, or not improbably may affect, the danger of the property, or the risk, difficulty, or duration of the salvor's service (o). If any such fact is, either intentionally or unin-

(b) Mis-statement or non-disclosure of a material fact.

(k) See, as to the avoidance of the alleged salvage agreement on this ground, per Dr. Lushington, *The Henry*, 15 Jur. 183; *The Repulse*, 2 W. Rob. 396, at p. 397; *The Helen and George*, Swab. 368, at p. 369.

(l) Lush. 583. Cf. *The Kolpino*, 73 L. J. P. 29, at p. 30.

(m) L. R. 2 A. & E. 57.

(n) Cf. the judgment of Dr. Lushington, *The Westminster*, 1 W. Rob. 229, at p. 235.

(o) For cases in which it was held that the matter alleged to be concealed was immaterial, see *The Jonge Andries*, Swab. 226 (affirmed on appeal, *ibid.* 303); *The Canova*, L. R. 1 A. & E. 56; *The Henry*, 15 Jur. 183, referred to in the text below.



Chapter IX. tentionally, mis-stated or not disclosed before the conclusion of the alleged agreement, that agreement will not be upheld against the party who has been led or suffered to contract without knowing the true state of things.

Examples. *The Kingalock* (*p*), although the agreement in that case was somewhat of a mixed nature, and not purely a salvage agreement, sufficiently illustrates the law on this point. In that case, a steam tug was engaged by the master of the *Kingalock* to tow that vessel from the mouth of the Thames to London for 40*l*. The *Kingalock* had, in fact, suffered considerable damage, but of this the master of the steam tug was not informed at the time. He discovered it, however, in the course of the towage. In a salvage suit against the *Kingalock*, the Court refused to recognise the agreement, and awarded the steam tug 150*l*. In the course of his judgment, Dr. Lushington made the following observations on the principle involved in it:—"An agreement to bind two parties must be made with a full knowledge of all the facts necessary to be known by both parties; and if any fact which, if known, could have any operation on the agreement about to be entered into is kept back, or not disclosed to either of the contracting parties, that would vitiate the agreement itself. It is not necessary, in order to vitiate an agreement, that there should be moral fraud; it is not necessary, in order to make it not binding, that one of the parties should keep back any fact or circumstance of importance, if there should be misapprehension, accidentally or by carelessness; we all know that there may be what, in the eye of the law, is termed equitable fraud." The same principle was again asserted by Dr. Lushington in the later case of *The Canova* (*q*): "If, though unintentionally, there was a concealment of a fact so material that it ought to invalidate the agreement, I should not enforce it."

As to mis-  
statement or  
non-dis-

It is noteworthy, upon this head, that, in Dr. Lushington's opinion, the value of the property in peril is not such a

(*p*) 1 Spks. E. & A. 265.

(*q*) L. R. 1 A. & E. 56. The Court in this case (which was decided to be a case of towage only) held that the

fact that some of the crew of the *Canova* were ill was not, in the circumstances, so material a fact that its non-disclosure should invalidate the agreement.

material fact, in regard to the making of a salvage agreement, that the misstatement of it, or the non-disclosure of it, to the salvors, would affect the validity of the agreement. In *The Henry* (r), the salvors sought to upset a salvage agreement on the ground that the master of the salvaged vessel had misled them by fraudulently keeping back from them the knowledge of the true value of the cargo on board, and representing it to consist only of fullers' earth. Dr. Lushington held, in the first place, that the charge of fraud failed in the proof; and in the second place, that the value of the cargo in peril was not one of the facts which salvors are, in any case, entitled to consider in fixing the terms of a salvage agreement; that, therefore, as it is an immaterial fact, even a positive misrepresentation in regard to it could not lead to an avoidance of the salvage agreement.

"If," said the learned judge (s), "the master had been asked to state the condition of the ship, and had given a false description of the damage done and the difficulties under which she laboured—if he had concealed the leaks which might possibly have existed in the ship, or had misrepresented the number of his anchors and cables, or the means of supplying any want—that would be a clear fraud affecting the agreement itself, upon which the Court would have been inclined to hold that it was null and void from the beginning. I cannot assent to the proposition, that by the value of the cargo the salvors are to determine the amount of the agreement. It is perfectly true that this Court does, to a certain and limited extent, take into consideration the value of the property saved in assessing salvage compensation, with a view of making the general rate of compensation sufficient to induce persons to undertake salvage services, and, as it were, to a certain extent, making up, in cases of large value, for the impossibility of giving a complete and adequate reward in cases of small value. Salvors are not entitled to make an agreement upon any other grounds than these:—The extent of danger to which the property to be salvaged is exposed, the degree of labour they will have to undergo, the risk to which they themselves may be exposed, and the length of time to be occupied; but they are not to

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closure to the salvors of the value of the property in peril.

*The Henry.*

(r) 15 Jur. 183.

(s) *Ibid.* p. 184.

Chapter IX. speculate on the value of the cargo. See what a dangerous principle I should encourage if I allowed this to pass without observation. Here is a packet coming from South America laden with dollars; she gets, in great distress, into the chops of the Channel; assistance is offered, but the salvors say, 'We will do nothing till we know the quantity of dollars on board.' That would, in the first place, lead to extortion; and in the second, to disputed agreements, over and over again, because the master may be ignorant of the precise value of the property. It is my duty utterly to discourage such proceedings as this. I am of opinion that the agreement is valid and binding, that the tender has been duly made, and I pronounce for it, and with costs. I hope no case of a similar description will come under my attention, for, if it does, it will invariably be followed by a similar sentence" (t).

The judgment considered.

It may be observed in regard to this judgment, that expressions are used elsewhere (u) also by Dr. Lushington, which may not unfairly be taken to indicate that the learned judge did not attach so much weight to the value of the salvaged property as a substantive element in the calculation of the salvage reward as, according to later cases (x) in the Court of Admiralty and in the Privy Council, ought to be attached to it. With all due allowance, however, for this possible difference of view, it seems difficult to suppose that he intended here to say that the Court would uphold, as binding on the salvors, an agreement which was in fact obtained from them by an intentional and gross misrepresentation of the value of the property in peril, or that he meant more than that honest silence or honest mis-statement on this point ought, in no case, to affect the validity of a salvage agreement. The justice of the rule, even when thus limited, might, but for the decisive authority of this case, appear to be somewhat

(t) 15 Jur. 183, at p. 184.

(u) See *The Syrian*, 2 M. L. Cas. 387, at p. 388. Dr. Lushington's language in this case has been even relied upon as an authority that the quantum of salvors' remuneration is not in any degree to be affected by the value of the property salvaged. But this must

not be taken to have been the intention of the learned judge: see *The Amérique*, L. R. 6 P. C. 468, at pp. 474, 475.

(x) See *The Amérique*, L. R. 6 P. C. 468, at pp. 474, 475; *The Werra*, 12 P. D. 52, at p. 53; *The Glengyle*, (1898) P. 97, at pp. 103, 111.

open to question. There can be no doubt that in the Court of Admiralty, if the character of the services in the two cases is equally meritorious, the saving of property worth 100,000*l.* is much more highly rewarded than the saving of property worth only 10,000*l.* The value of the salvaged property, said Barnes, J., in *The Glengyle*, is an important element in considering the amount to be awarded (*y*). Ought knowledge, which the Court deems material in adjudging the reward, to be treated as something immaterial to the salvor when he is asked to fix his reward by agreement? As to the evil of extortion which Dr. Lushington seems to fear if a salvor is entitled to have correct information as to the value of the property when bargaining for the price of its rescue, the Court, as will be seen presently, promptly sets aside any agreement for an exorbitant amount when it has been obtained by practical compulsion; and as to the suggested engendering of disputes, because the master of the ship in peril may be ignorant of the precise value of the property, no one, of course, could reasonably argue that a difference between the stated value and the real value of the property at risk should make the agreement void, unless the difference was so great that, if there had been no agreement, it would materially affect the Court's award.

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*The inequitable character of the agreement itself.*

The law on this head is thus stated by Dr. Lushington in an earlier portion of his judgment in *The Henry* (*z*), from which quotation has been already made :—

(o) The agreement will be disregarded if its terms are inequitable.

“Where agreements are made at sea between salvors and masters of vessels, the Court will always be very desirous to confirm them, if it can do so consistently with equity and justice. The Court would be very reluctant, under ordinary circumstances, to disturb an agreement made between parties on account of the sum appearing too large or too small, but I do not say that there are not cases in which I should not hesitate for a single moment to pronounce against an agreement either on the one ground or on the other.”

The law stated in *The Henry*.

The agreed reward may be inequitable, either by reason of its exorbitancy or by reason of its inadequacy.

(*y*) (1898) P. 97, at p. 103.

(*z*) 15 Jur. 183.

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Special regard paid to the position of the parties when the agreement was made.

Where there has been practical compulsion, the making of the agreement can be no evidence of the fairness of the sum claimed by the salvors under it.

A salvage agreement, then, may be set aside as inequitable on account of either the exorbitancy or the inadequacy of the reward fixed by it. In deciding, however, whether the agreement is equitable or not, the Court of Admiralty looks to see not only whether there is a difference between the amount of the agreed reward and the sum which, for the services rendered, might be thought reasonably adequate, but also what was, to use the language of Butt, J., in *The Mark Lane* (a), "the position of the parties." An agreement is *prima facie* strong evidence of what is fair, because, in the absence of evidence to the contrary, it may be taken to be that which the parties who were most interested, and best able to judge, thought at the time to be fair. But if, on examination of the facts, it appears that, whilst there was no fraud or deceit in the transaction, yet one of the parties was, when he made the agreement, in such straits that he was practically compelled to accept such terms as the other party might dictate, and that other party used his opportunity to dictate them, it is obvious that the value of the agreement, as evidence of what was fair, is entirely taken away.

When, therefore, a salvor seeks to enforce a salvage agreement, and the Court of Admiralty finds not only that the price of the salvage services which it incorporates is disproportionate to the nature and value of those services, but also that the agreement was wrung from those in charge of the property in peril by the salvors' refusal to give on any lower terms the help which alone could save the property from destruction, the duty of the Court, as a Court of equity, to disregard the agreement, is far more obvious than it is in a case where there is no evidence of any such practical compulsion, and the largeness of the stipulated reward can be attributed only to some ignorance, timidity, or recklessness on the part of those who agreed to pay it.

Illustrations of the Court's action.

It will be sufficient upon this point to refer at any length only to three modern cases (b); the first, *The Medina* (c), decided in

(a) 15 P. D. 135.

(b) See also *The Cargo ex Woosung*, 1 P. D. 260; *The Silesia*, 5 P. D. 177; *The Rialto*, (1891) P. 175; *The Altair*, (1897) P. 105; *The Kilmahoe* (1900),

16 Times L. R. 155. In all the element of "practical compulsion" was present; but not in so strong a

(c) 2 P. D. 5.

1877 by the Court of Appeal (James, L. J., and Baggallay and Chapter IX.  
Brett, J. J. A.), affirming the decision of Sir Robert Phillimore;  
the second, *The Mark Lane*, decided in 1890 by Butt, J. (d),  
and the third, *The Port Caledonia and The Anna*, decided in  
1903 by Bucknill, J. (e), in the Court of Admiralty.

The facts of *The Medina* have been fully stated in an earlier *The Medina*.  
chapter (f). At the commencement of his judgment, Brett, L. J.,  
made the following observations:—

“I think that the old rule of the Admiralty Court ought not  
to be lightly encroached upon, viz., that where there is an  
agreement made by competent persons and there is no mis-  
representation of facts the agreement ought to be upheld, unless  
there is something very strong to show that it is inequitable;  
but I think that this agreement cannot be upheld. The amount  
claimed by the *Timor* was exorbitant—not merely too large, but,  
for the services to be rendered, grossly exorbitant—and it was  
forced upon the captain of the *Medina* by practical compulsion.  
Now, that the sum was grossly exorbitant, I think, follows from  
this consideration—that the service was one of no difficulty at  
all, and, under the circumstances, there was no danger whatever  
to the salving ship. She could take these people off with perfect  
facility; the service was not an onerous service; the pretence of  
a difficulty in going into a known port like Jeddah is fallacious;  
from the beginning to the end there was no difficulty or danger  
to the salving ship, and at the time the agreement was made  
there was no probability of any danger to her. But there is  
more in this case. It was forced upon the captain of the  
*Medina* by practical compulsion, because his position was this—  
and that is to be considered—he was the captain of a ship ashore  
on a rock with 550 pilgrims on board her. If the captain refused

degree as in the cases cited in the text.  
In *The Cargo ex Woosung*, there was a  
further ground for avoiding the agree-  
ment in the fact that it had been ob-  
tained by the captain of a ship of the  
Bombay Government who had been  
ordered to go upon the salvage service,  
and who, as the Court of Appeal held,  
had no right to impose terms as to sal-  
vage. Baggallay, J. A., and Lush, J.,

further were of opinion, though they  
did not actually decide, that an officer  
of the Government in such circum-  
stances ought not to make any agree-  
ment whatever as to reward with the  
master of the salvaged ship.

(d) 15 P. D. 135.

(e) (1903) P. 184.

(f) Chap. III. p. 69.

Chapter IX. to accept the terms, he took upon himself the responsibility of allowing 550 human beings under his care to be left to the danger of being drowned. That is compulsion to the mind of any honest man. Therefore, I think there was a grossly exorbitant sum obtained on practical compulsion. Under all these circumstances I think that by the rules of the Admiralty Court the agreement cannot stand."

*The Mark Lane.*

In *The Mark Lane* (g), the facts were as follows:—

The ss. *Crete* in the Atlantic fell in with the ss. *Mark Lane* which had lost her propeller, was leaking, and could not use her engines. The *Mark Lane* was towed by the *Crete* to Halifax, a distance of about three hundred and fifty miles. Before the service was begun, the masters of the *Crete* and *Mark Lane* signed an agreement that the owners of the *Mark Lane* should pay 5,000*l.* for the service, or a sum for work done if it was not successful. The master of the *Crete* would not take a less sum, and the master of the *Mark Lane* had reasonable grounds for believing, and believed, that his vessel would be abandoned if he did not sign the agreement. The sum of 5,000*l.* was more than one-fifth of the total value of the *Mark Lane*, her cargo and freight. Held, that the sum stipulated for was exorbitant, and that the agreement must be taken to have been made under compulsion, and could not be enforced; and that a sum of 3,000*l.* should be awarded the salvors as a fair remuneration for their services. The principle is stated and applied to the particular case by Butt, J., in the following passage of his judgment:—

"The values of these two steamers, though not large, are considerable. The plaintiffs are seeking to recover the sum of 5,000*l.*, as due to them by agreement, and not, as is usually the case, asking the Court to award such an amount of salvage as it may deem just. I feel satisfied that for services such as those rendered in this case the Court of Admiralty never has given such an award as 5,000*l.*; and I think, having regard to the state of the *Mark Lane*, the distance she was towed, and that 5,000*l.* is more than one-fifth of the total value of the saved property, the plaintiffs' demand is exorbitant. I think it would be so were this simply a salvage agreement; but it is not—far

from it. One reason why salvage awards are so large is because, if the service is unsuccessful, at whatever risk and labour it may have been performed, the salvor gets nothing. But by this agreement, in the event of the *Mark Lane* going down, the plaintiffs were still to be paid for their services. Thus, it is an agreement for 5,000*l.* if the services are successful, and for payment for services rendered if unsuccessful. I have said that I consider the demand exorbitant. In the cases referred to by counsel, the word 'inequitable' has been used. But I think that what is at the root of the question is this—where it is found that a wholly unreasonable price has been insisted upon by the salvors, and an agreement incorporating it has been signed, the Court looks rather to the position of the parties than to the reasonableness or unreasonableness of the amount. Were the parties, in fact, contracting on equal terms? It is clear that in the present case they were not. It is true that there is not in this case the amount of duress which would invalidate an agreement at common law; but in this Court the same amount of compulsion or duress—call it what you will—is not necessary to induce the Court to refuse to enforce an agreement. The captain of the *Crete* appears to have said, though not in so many words, 'If you do not sign this agreement to pay 5,000*l.*, I will leave you.' His manner and demeanour were such that they led the captain of the *Mark Lane* to believe that that was what he meant to do, and he has not from the first to last said that he would either have taken less or have stayed by the *Mark Lane*. The fact is, that the master of the *Mark Lane* signed this agreement under compulsion, and, the amount being exorbitant, I decline to uphold the agreement."

The facts of *The Port Caledonia* and *The Anna* (h) were as follows:—Two large sailing vessels, the *Port Caledonia* and the *Anna*, were sheltering from bad weather in Holyhead Harbour, when the master of the *Port Caledonia*, finding that his vessel had dragged down into dangerous proximity to the *Anna*, signalled for a tug. In response to the signal a tug came up, but her master demanded "1,000*l.* or no rope." The services of the tug were ultimately accepted on these terms, and the *Port Cale-*

*The Port  
Caledonia and  
The Anna.*

(h) (1903) P. 184.



Chapter IX. *donia* was towed to her former berth. In an action to enforce the agreement, Bucknill, J., said: "The first question to consider is, what was the position of the two persons who made the agreement? The position was this: one man was in a position to insist upon his terms, and the other man had to put up with them. He could not help himself. He says in his letter to his owners: 'He demanded 1,000*l.* to take me away. I offered him 100*l.*, or to leave it to the owners; but he would not agree. So I agreed to give him 1,000*l.* rather than foul the *Anna*.' He appreciated the possibility of fouling the *Anna* if the weather had remained bad, and if the wind had remained in the S.W., neither of which things happened. So he found himself obliged to give way to a person who would not move him, and who would have allowed him and the *Anna* to drift towards the rocks, and who would, I think, have seen them go there without putting a hawser on board, unless he got a promise of 1,000*l.* . . . This was an inequitable, extortionate, and unreasonable agreement, and I think that the services rendered will be well rewarded by the sum of 200*l.*, with County Court costs" (i).

The judgment  
of Story, J., in  
*The Emulous*.

The duty of an Admiralty Court to set aside a salvage agreement for an excessive reward, where the salvor has been able practically to dictate his own terms, has been nowhere more powerfully stated than by Story, J., in *The Emulous* (k).

"No system of jurisprudence purporting to be founded upon moral or religious, or even rational, principles, could tolerate for a moment the doctrine that a salvor might avail himself of the calamities of others to force upon them a contract unjust, oppressive, and exorbitant; that he might turn the price of safety into the price of ruin; that he might turn an act, demanded by Christian and public duty, into a traffic of profit, which would outrage human feelings and disgrace human justice."

Where the  
amount fixed  
for salvage is

It is not, however, as it is submitted (l), only where it is proved that there has been unfair dealing, in the shape either of fraud,

(i) (1903) P. 184, at pp. 189, 190.

(k) 1 Sumn. (Amer.) 207, at pp. 210, 211.

(l) In *The Cargo ex Woosung*, 1 P. D. 260, at pp. 263, 264, there are expres-

sions in the judgment of Sir R. Phillimore which seem to sanction the narrower view. Cf. also, per Butt, J., *The Rialto*, (1891) P. 175, at pp. 178, 179.

or misrepresentation, or practical compulsion, that the Court will interfere with an agreement which fixes a grossly excessive remuneration. Evidence of any such unfair dealing greatly strengthens, of course, the case against the agreement, but, even without such evidence, if it finds the exorbitancy to exist, however that exorbitancy originated, the Court will, alike on principle and on authority, be justified in setting aside the agreement.

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exorbitant, though not obtained either by fraud or compulsion, the agreement may be set aside.

The propriety of disregarding an agreement, if the amount of the reward appears to the Court to be inequitable, has, indeed, been recognised by the maritime law from very early times. Thus, we find it laid down in the *Rolle of Olayron*, probably compiled in the latter part of the twelfth century, that "If it were so, that the mayster and the marchauntes have promised to folke, that shuld helpe them to save the shyp and the said goodes, the thyrde parte or half of the said goodes which shuld be saved from the peryll that they be in, the justyce of the country ought well to regarde what payne and what labour they have done in saving them, and after that payne, notwithstanding that promise whiche the said mayster and the marchauntes shall have made, rewarde them. This is the judgment" (m).

This is in accordance with the ancient practice in maritime Courts;

The principle of the Court's action in such a case was very clearly stated by Brett, L. J., in the case of *Akerblom v. Price* (n). "The fundamental rule of administration of maritime law in all Courts of maritime jurisdiction is that, whenever the Court is called upon to decide between contending parties, upon claims arising with regard to the infinite number of marine casualties, which are generally of so urgent a character that the parties cannot be truly said to be on equal terms (o) as to any agreement they

and with the fundamental rule of the administration of maritime law laid down in *Akerblom v. Price*.

(m) *Black Book of the Admiralty*, ed. Twiss, Vol. II. p. 437.

(n) 7 Q. B. D. 129, at pp. 132, 133. For the consideration of this case, see above, Ch. IV., pp. 92—96. For a similar statement of the law as to agreements, see per Dr. Lushington, *The Trus Blue*, 2 W. Rob. 176, at p. 179.

(o) "Now, in one sense, the services

of any salvor are unwillingly and under duress accepted; the lesser evil of losing a portion of the profit and property being submitted to rather than the greater evil of losing all; so that, in that sense, all salvage services are accepted under compulsion": per Sir R. Phillimore, *The Cargo ex Woon-sung*, 1 P. D. 260, at p. 265. See also, per Butt, J., *The Rialto*, (1891) P. 175, at p. 178.

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may make with regard to them, the Court will try to discover what, in the widest sense of the term, is, under the particular circumstances of the particular case, fair and just between the parties. If the parties have made no agreement, the Court will decide primarily what is fair and just. . . . If the parties have made an agreement, the Court will enforce it, unless it be manifestly unfair and unjust; but if it be manifestly unfair and unjust, the Court will disregard it, and decree what is fair and just. This is the great fundamental rule. In order to apply it to particular instances the Court will consider what fair and reasonable persons, in the position of the parties respectively, would do or ought to have done under the circumstances."

The judgments of Dr. Lushington.  
*The Henry.*

The opinion of Dr. Lushington, stating the law in *The Henry* (p), that a salvage agreement might be set aside on account of the sum fixed by it for salvage being, in the opinion of the Court of Admiralty, too large or too small, has already been quoted (q). Equally plain, it is submitted, is his meaning in *The Helen and George* (r). "The principle upon which the Court acts is that, if satisfied that an agreement has been made, it will carry it into effect, unless totally contrary to the equity of the case; but the owner of the ship, against whom the agreement is attempted to be enforced, may show that it was improperly obtained. The owner of the ship may contend that, under the circumstances, the sum of money was grossly exorbitant; and, *a fortiori*, if he can show that the agreement was obtained by fraud or compulsion, no Court would hold it to be binding." In *The Cargo ex Woosung*, Baggallay, J. A., referring to this passage, proceeds (s): "Therefore, the ground of exorbitancy of the agreement would be sufficient to set it aside."

*The Helen and George.*

*The Theodore.*

In *The Theodore*, although it is described in the head-note of the Report (t) as a case of "an agreement dishonestly made," it does not appear, from the statement of the evidence, that there was any fraud or collusion between the salvors and the master of the salved vessel who made the agreement, or that the owners

(p) 15 Jur. 183.

(q) *Supra*, p. 231.

(r) Swab. 368, at p. 369.

(s) 1 P. D. 260, at p. 270.

(t) Swab. 361.

charged any such conduct in their defence in the salvage suit, but simply that the master had "improperly and recklessly" agreed to an altogether excessive payment for a service of little difficulty rendered to a vessel in little danger. "I regret to say," said Dr. Lushington, in the course of his judgment (*u*), "on the present occasion—for the Court is generally anxious to protect the interests of salvors—that it is an exorbitant demand, and such as no Court of justice would be justified in carrying into effect."

In *The Strathgarry*, where it was unsuccessfully contended that an agreement to tow a disabled ship for half-an-hour for 500*l.* was inequitable, Bruce, J., in the course of his judgment, said (*x*): "A number of cases have been cited during the argument. In some of them slightly different language has been used by the judges. Sometimes the word *exorbitant* has been used, sometimes the word *inequitable*; but in substance all the cases are, I think, consistent with the rule laid down in *Akerblom v. Price* (*ubi sup.*) as the fundamental rule. The question, therefore, to be determined is, whether the agreement was manifestly unfair or unjust." There was no element of compulsion in that case, the agreement being, as the Court found, in a form which the master of the salvaged vessel approved, because he was anxious to prevent the possibility of a larger claim being made upon his vessel in the event of the towage leading to a successful issue.

And in the recent case of *The Crusader* (*y*), where the salvage agreement on which the action was based was the deliberate choice of the master of the salvaged vessel, who had required it to be made before he would allow salvage operations to be begun, Sir Gorell Barnes treated the agreement as inequitable on the ground that it was "an absolutely outrageous bargain," and that in attempting to make it the master had acted "in an extremely foolish way."

A salvage agreement may be inequitable on account of the smallness, as well as on account of the exorbitancy, of the remuneration which it fixes (*z*). The salvors are as much en-

A salvage agreement is inequitable, and will therefore be set aside, if the reward

(*u*) *Ibid.* p. 352.

(*x*) (1895) P. 264, at p. 270.

(*y*) (1907) P. 22; affirmed by the Court of Appeal, March 15th, 1907.

(*z*) See *The Henry*, 15 Jur. 183.

**Chapter IX.** titled to the benefit of the equitable jurisdiction of the Court as the owners of the salvaged property. *The Phantom* (a) affords an example of the application of the principle. The material facts in that case were that the smack *Phantom* was one of a great many small vessels which had entered the harbour of Lowestoft about the same time to take refuge from a gale from the N.N.E. The salvors, some beachmen of Lowestoft, were engaged by the master of the *Phantom* to haul her from the S. to the N. side of the harbour, in order to avoid coming into contact with other vessels making in. Whilst the salvors were rendering this service, a brig entering the harbour came into collision with the *Phantom*, and they incurred great risk from the falling masts and spars. After about two hours' labour, the salvors succeeded in bringing the smack over to the north pier. It was alleged on the part of the owners of the *Phantom*, but denied by the salvors, that there was an agreement to perform the service for 8s. 6d. The value of the *Phantom* was about 700l. The case came before the Court of Admiralty on appeal from the decision of the magistrates at Lowestoft, who had held that there was no salvage service at all, and dismissed the claim. In the course of his judgment, reversing this decision, Dr. Lushington, after deciding that the service was in the nature of salvage, said, upon the question of the agreement:—

Dr. Lushington's judgment in *The Phantom*.

“Now, unless there was a valid agreement binding upon the parties, I certainly think it would be the duty of the Court to overrule this judgment, for the reasons I have shortly specified. Is it a valid agreement? It is this, that when the vessel first came in, and when the salvors came and offered their assistance, they inquired whether there was anything they could do, and the master answered, according to his own account, that although he was not very particular, still, says he, ‘I will take you and give you 8s. 6d.’ No doubt he swears that the agreement was for 8s. 6d. I will assume that what he swears about the agreement is true. There is another matter in all agreements, where salvors are going to perform a duty, whether the agreement is just and equitable, because, if it is not, however much it has been agreed upon by both parties, the Court is in the habit of overruling such an agreement if it is unjust and in-

(a) L. R. 1 A. & E. 58.

equitable. Looking at the storm, seeing the vessel came in in consequence of it, and was moved by reason of danger apprehended, which proved to be real, I think the amount of 8s. 6d. utterly futile, and for these reasons I shall overrule the judgment. I think it is a service that requires a small sum of money, and I shall give 10l. and costs" (b). Chapter IX.

But the Court of Admiralty does not set aside a salvage contract which appears otherwise unobjectionable, merely because in the circumstances as they have in fact happened it would, but for the contract, award as salvage a somewhat greater or a somewhat less sum than that which the parties have agreed between themselves; or because it finds that one or other of the parties might, as matters have turned out, have made a more prudent bargain (c). It not unfrequently happens either that the services involve more risk or difficulty than the salvor has foreseen, or, on the other hand, that they prove more easy of execution than the master of the ship to be salvaged when making the bargain has supposed that they would be. But if they were such services as were fairly within the meaning of the contract, the mere circumstance that the ease, or risk, or duration has proved to be greater or less than was expected when the contract was made, affords no ground for the Court's interference with it. But the agreement will not be set aside merely because, as things have happened, either party might have made a more prudent bargain, or, but for the agreement, the Court might have awarded the salvors a rather larger or smaller amount.

"It is no argument," said Dr. Lushington in *The True Blue* (d), "against the validity of the contract, that in the first instance it was entered into under the impression that the service would be light, but that, in consequence of a change of weather or other circumstances of that nature, it subsequently became more onerous. It is the very nature of agreements of this kind to fix a stated sum for compensation for a stated service, and the parties who enter into the engagement take the risk of any circumstances which may, in effect, alter the extent of the stipulated service." Law stated by Dr. Lushington in *The True Blue*.

Language to the same effect was used by Dr. Lushington in the later case of *The Resultatet* (e); *The Firefly* (f); and *The Cato* (g)

(b) L. R. 1 A. & E. 58, at p. 61.

(c) See, for an example of an agreement disadvantageous to the salvor, *The Mulgrave*, 2 Hagg. 78, as explained by Dr. Lushington, *The Catherine*, 6 Notes of Cases, Suppl. xliii.,

at pp. li., lii.

(d) 2 W. Rob. 176, at p. 180.

(e) 17 Jur. 353, at p. 354.

(f) Swab. 240, at p. 241.

(g) 35 L. J. Adm. 116, at p. 117.

Chapter IX. (where the ground of the attempt to set aside the agreement was the unexpected duration of the service). In *The Jonge Andries* (h), the Privy Council, affirming the judgment of Dr. Lushington (i), held that an agreement to perform a service of a salvage nature for a specific sum was not lightly to be set aside, either because the weather became tempestuous or because the vessel was longer in arriving at a port of safety than might reasonably have been expected. In *The Waverley* (k), a case of very meritorious salvage service, in which there was a bargain for the *London* to tow the *Waverley*, a disabled steamer, into Lisbon, then distant from twenty to thirty miles, for 400*l.*, and after the making of the agreement the weather became much worse, causing the towing hawsers to part several times, placing both the vessels in considerable danger, and greatly prolonging the salvage service, Sir Robert Phillimore held that the master of the *London* was not entitled by reason of the supervening circumstances and the fact that the task had proved more difficult than was expected to declare the contract to be at an end, and he refused to increase the amount of remuneration fixed by the contract. "I feel, as strongly as any of my predecessors in this chair have felt, the duty and expediency of encouraging by liberal remuneration all salvage services, but I feel not less strongly the duty and expediency of not allowing a contract deliberately entered into between perfectly competent parties to be set aside by either of them because the execution of it has turned out more difficult or more easy than was anticipated at the time of making the contract" (l). In the later case of *The Strathgarry*, where services were rendered under an agreement to tow a vessel for thirty minutes for 500*l.*, and the services were productive of no good result, Bruce, J., said: "As the event proved, the services rendered by the *Hauckhurst* were not successful; but in forming an opinion of the fairness or unfairness of the agreement, I think that the Court must regard the position of the parties at the time the agreement was entered

(h) Swab. 303.

(i) Swab. 226.

(k) L. R. 3 A. & E. 369.

(l) *The Waverley*, L. R. 3 A. & E. 369, at p. 381. It may be useful to note that in this case the defendants

tendered, to cover certain expenses of the salvor, a sum beyond the contract amount, and it was unsuccessfully contended by the plaintiffs that after such a tender the original contract could not be insisted on by the defendants.

into. The agreement cannot become fair or unfair by reason of circumstances which happened afterwards" (m). Chapter IX.

Lastly, in *The Elfrida* (n), a case before the Supreme Court of the United States, Brown, J., said with regard to the proposition that the Court should set aside an agreement when the agreed remuneration turned out to be greater than the services were actually worth: "If when the contract is made the price agreed to be paid appears to be just and reasonable in view of the value of the property at stake, the danger from which it is to be rescued, the risk to the salvors and the salving property, the time and labour probably necessary to effect the salvage, and the contingency of losing all in case of failure, this sum ought not to be reduced by an unexpected success in accomplishing the work, unless the compensation for the work actually done be grossly exorbitant" (o). If the law were otherwise, salvage agreements would be of no practical value.

Just as the Court will disregard an agreement made before salvage services are begun, if it holds the terms to be under all the circumstances inequitable, so also where, after the services have been rendered, a payment for them has been made to the salvor, and he has given a receipt in the form of a discharge of all claims, the Court will nevertheless make him an award if it holds the payment to be very inadequate, and it either finds the salvor to be an ignorant person who has not properly understood the value of his salvage services, although he may have understood the meaning of the receipt (p), or finds that the circumstances under which the receipt was signed are not satisfactorily explained by those who seek to set up the settlement as a bar to the salvage claim (q).

In the case of settlements of salvage remuneration, the Court will not hold the salvor bound if it holds the settlement inequitable.

#### *The Cancellation of the Contract by Mutual Consent.*

This is expressly mentioned by Dr. Lushington, in *The Repulse* (r), as one of the ways by which a contract fixing the (d) The salvage agreement may be can-

(m) (1895) P. 264, at p. 271.

(n) (1898), 172 U. S. Rep. 186.

(o) *Ibid.* at p. 197.

(p) *The Silver Bullion*, 2 Spks. E. & A. 70; *The Sir Robert Peel*, 8th Dec. 1864, cited in Pritch. Adm. Dig.,

3rd ed. (1887), vol. 2, p. 1891; *The Missouri's Cargo*, 1 Sprague (Amer.), 260, at p. 273.

(q) *The Macgregor Laird*, W. N. (1867) 308.

(r) 2 W. Rob. 396, at p. 397.



**Chapter IX.** salvage remuneration can be annulled. The cancellation may be effected either by express agreement between the parties or by conduct from which it ought to be inferred. An example of cancellation by express consent will be found in *The Africa* (s), and of cancellation by consent to be implied from conduct in *The Samuel* (t). In the latter case, the facts of which were somewhat complicated, the material points were these:—The *Samuel*, with a cargo of 750 tons of tallow and some lath-wood on board, grounded on the Hasborough Sand. The persons claiming as salvors agreed to lighten the ship and to take the cargo discharged in lightening to Yarmouth at a certain rate per cask, and also to do their best to get the ship off and into Yarmouth; and for this latter service they agreed to accept such an amount of reward as the agents of the owners and underwriters should think fit. They then lightened the vessel, took her to Yarmouth Roads, and left her there, for the time, at anchor, as there was not sufficient water to enable them to take her into the harbour. The agents and the master, instead of waiting until the salvors should resume the salvage, tried themselves to take the vessel into the harbour. The result was that she got aground and broke up, and the tallow then remaining on board was saved by other salvors. The Court held that the contract must be taken to have been abandoned by the owner's representatives, and awarded the first salvors 250% in addition to 84% previously paid to them.

The burden of proof lies upon the party asserting the cancellation.

The burden of proof lies heavily upon those who assert the cancellation. "Whoever takes upon himself to establish the fact that the admitted agreement has been invalidated by consent of parties, is bound to prove by clear preponderance of testimony that it was so cancelled" (u).

Salvors not held to an agreement if circumstances supervene rendering the agreed service impossible, and services of a different

In considering the various grounds upon which a salvage agreement may be invalidated, it has, of course, been assumed that the services rendered by the salvors are such services as are within the scope of the agreement—such as it is reasonable to suppose that the parties contemplated when they entered into the agreement.

(s) 1 Spks. E. & A. 299.  
(t) 15 Jur. 410.

(u) Per Dr. Lushington, *The Batony*,  
2 W. Rob. 167, at p. 172.

But a different condition of things is possible, and is not in fact uncommon. After a proper and valid agreement for salvage has been concluded, circumstances may supervene which, without fault on the part either of the salvors or of those on board the salved vessel, make the service which was contracted for impossible or insufficient, and the salvors thereupon perform salvage services of a different kind or class from those which were stipulated for in the salvage contract, or which can fairly be treated as within its scope. Clearly, in such a case, the Court cannot hold the salvors to the terms of that agreement. The salvors have done that which, so far as the agreement went, they were not at all bound to do, and they are justified in asking for remuneration beyond the sum which they had agreed to accept only for different services. Such a case was that of *The Westbourne* (x), decided in 1889 by the Court of Appeal (Lord Esher, M. R., Lindley and Bowen, L. JJ.). In this case the ss. *Howick* fell in with the ss. *Westbourne*, which had lost her propeller about 260 miles east of Gibraltar, and 60 miles from Carthage. The weather was then moderate. A parol agreement was made between the masters of the two vessels that the *Howick* should tow the *Westbourne* to Gibraltar, the tow supplying the hawsers, for 600%. After the commencement of the service the weather became most violent, hawser after hawser parted, and it was found to be impossible to take the *Westbourne* to Gibraltar. The course was then, against the wish of the master of the *Westbourne*, changed, and she was towed to Carthage. After arriving there the master of the *Westbourne* voluntarily signed a document setting forth in effect that the abandonment of the towage to Gibraltar and the change of course to Carthage had been necessitated by the stress of weather, and the damage to hawsers, ship, and crew, caused thereby. The value of the salved vessel was 10,000%, and of her cargo 14,500%. Butt, J., held that under the circumstances the agreement was not binding, and he awarded to the plaintiffs 900% as a fair and reasonable amount of salvage; and this judgment was affirmed by the Court of Appeal.

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nature or class and deserving a larger reward have been performed.

*The Westbourne.*

"I am of opinion," said Lord Esher, in the course of his judgment, "that the agreement entered into by the master of

(x) 14 P. D. 132. See per Dr. Lushington, *The William Brandt, Junior*, 2 Notes of Cases, Supp. lxvii. at p. lxviii.

Chapter IX. the *Howick* and the *Westbourne* was a towage agreement, but entered into whilst the *Westbourne* was in such exceptional danger that she required salvage assistance; it was thus a towage agreement to do work in the nature of a salvage service. If that agreement became more difficult to carry out by reason of succeeding circumstances, the Court could not therefore alter it. But if, by reason of circumstances over which the salvors had no control, the difficulty of the service was so far increased as to make it in fact a wholly different service from that which was originally contemplated by the parties, or a service of a wholly different class, then the Court of Admiralty has a right to deal with the case as if the original agreement had not been made, and to make such an award as under the circumstances it may think right. In the present case, at the time this agreement was made, there is no doubt that the weather was bad, but it was weather which has been described as 'moderately bad.' The *Westbourne* was, however, so damaged that, although she could sail, she could not steer. She was, therefore, in manifest danger, and could only be placed in a position of safety by being towed into a port, and by the agreement in question that port was to be Gibraltar. But after this contract—whether regarded as a towage or a salvage contract matters not—was made, circumstances supervene putting it quite out of the power of the *Howick* to fulfil the original contract. The evidence on this point is conclusive, and supports the finding of the Trinity Brethren in the Court below and the judgment of Butt, J."

The Master of the Rolls then proceeded to review the principal facts of the case, and concluded thus:—

"The very parts of the vessel to which any other ropes would probably have been made fast had broken away, so that by the increase of the weather the circumstances had been wholly altered, and altered to this extent—that in my judgment, the ship, which was not in imminent danger before, although in a condition of helplessness, was put into a position of imminent danger. If the *Howick* had left the *Westbourne* at that time, she would probably have been lost. By the contract, the *Howick* had put herself in such a position that she was bound to remain by the other ship if she could. But the nature of the service had so altered, that instead of towing a helpless ship, she

was towing a ship in imminent danger, and with only a single rope. I am of opinion that if she had continued to tow her towards Gibraltar, she would not only have placed her tow in more imminent danger, but would have been in imminent danger herself. Then the *Howick* could not, under such circumstances, properly tow the vessel upon the course that was originally agreed upon. She could not with safety attempt to tow her to Gibraltar. She was bound to go away from that course altogether under the wholly different circumstances which had arisen. It had thus become practically impossible for her to carry out the original contract. The nature of the circumstances was altered, and the service had become different. The ship was in such danger that she required to be saved promptly, and she was saved by the prudence of the salvors. Under these circumstances, the Court of Admiralty had authority to deal with the question as though no contract had been made. If that is so, it is not suggested that the reward given by the Court below is an exorbitant sum. In my opinion, therefore, the appeal must be dismissed."

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So also in *The Hestia* (y), salvors who had contributed to some extent to the ultimate safety of a disabled vessel, were held not to be wholly disentitled to reward because they had made an express agreement which they failed to perform on account of supervening circumstances which rendered performance of the agreement difficult, though not impossible.

It remains only to consider the competency of the parties who make a salvage agreement to bind by it persons other than themselves.

**WHO ARE  
BOUND BY A  
SALVAGE  
AGREEMENT.**

So far, in the first place, as regards the owners of the salvaged vessel, it is clear that the master of that vessel is a party competent to bind them by an agreement (z), unless it can be shown either (1) that the circumstances of the case did not make the agreement reasonably necessary (a); or, (2) from the terms of the agreement itself, that it could not be for the owners'

The ship-owner is generally bound by an agreement made by the master of the salvaged ship.

(y) (1895) P. 193.

p. 378.

(z) *The Africa*, 1 Spks. E. & A. 299, at p. 300; *The Henry*, 15 Jur. 183; *The Watervly*, L. R. 3 A. & E. 369, at

(a) Per Brett, M. R., *The Renpor*, 8 P. D. 115, at p. 118. Cf. also *The Mariposa*, (1896) P. 273.

**Chapter IX.** benefit (b), as e.g., a contract with salvors for the purpose of saving only the lives of a master and a crew without regard to saving any property of the shipowner; or, perhaps, (3) as suggested by Dr. Lushington in *The Elise* (c) in regard to the owners of the salving vessel, that the owner of the salved vessel was himself at hand and gave the master no authority. The master is appointed for the purpose of conducting the navigation of the ship to a favourable termination, and he has, generally, as an incident to that employment, a right to bind his owners for all that is necessary for that purpose (d). Any person who is at the time properly acting in the command of the salved vessel is in the same position as the master himself in regard to authority to bind the owners.

If the agreement is made not by the master or other person in command of the salved ship, the authority must generally be proved.

In the case of a salvage agreement being made by some person other than the master or other servant of the shipowner properly in command of the vessel in distress, the agency, in order to bind the shipowner, must be proved. It was, however, held by Dr. Lushington, in *The Crus V.* (e), that a master who is upon a foreign coast, and is ignorant of the language, is presumably entitled to delegate his authority to act in salvage matters for the owners of his ship to a vice-consul of the flag to which his ship belongs.

The owner of the salved ship is liable to pay the whole of the stipulated reward.

It is to be observed that the liability of the shipowner under a proper salvage agreement fixing the amount to be paid for salvage is a personal liability for the whole of the stipulated amount, and not, as in the case where there is no salvage agreement at all (f), or where there is a salvage agreement not fixing any amount of remuneration (g), merely a liability for such a

(b) See per Barnes, J., *The Mari-posa*, *ubi sup.*, at p. 280; *The Kilmahe* (1906), 16 Times L. R. 155, where the master purported to bind his owners to pay salvage reward in respect of services for which they were not liable to pay. Cf. also *The City of Calcutta* (1898), 8 Asp. M. L. C. 442, where the question was raised, but left undecided, whether the master has authority to bind his owners to submit the remuneration to arbitration.

(c) Swab. 436, at p. 440. See also per Parke, B., *Beldon v. Campbell*, 20 L. J. Exch. 342, at p. 344.

(d) See per Parke, B., *Beldon v. Campbell*, 20 L. J. Ex. 342, at p. 344; and per Lord Blackburn, *Anderson v. Ocean Steamship Co.*, 10 App. Cas. 107, at p. 116.

(e) Lush. 583.

(f) See on this, Chap. VIII. pp. 210—212.

(g) *The Raisby*, 10 P. D. 114.

proportion of the salvage reward as the value of the ship and freight bears to the value of the cargo. There is an important decision of Butt, J., on this point, in the case of *The Prinz Heinrich* (h). In that case the master of the ss. *Prinz Heinrich*, which was in serious danger ashore on rocks in the Gulf of Tartary, entered into a written agreement with the master of the ss. *Fei Lung*, whereby he agreed to pay 200*l.* a day for every day the *Fei Lung* stood by and assisted by towing to get the *Prinz Heinrich* out of her position of danger, and, in the event of the *Prinz Heinrich* being got off or coming off the rocks during the continuance of the agreement, to pay 2,000*l.* beyond the daily pay of 200*l.* The same day the *Prinz Heinrich* came off, either through the jettison of her cargo or (as the learned judge inclined to believe) through the towing of the *Fei Lung*. It was held that the plaintiffs, the owners of the *Fei Lung*, were entitled, in an action *in personam*, to recover the whole of the sum claimed—2,200*l.*—from the owners of the *Prinz Heinrich*. In the course of the judgment, Butt, J., as to the liability of the shipowners for the whole amount of the agreed remuneration, observed (i):—

“ It has also been argued that the owners of the ship are not liable to pay the whole of this amount, because it is one agreed upon for the whole of the salvage, and that the shipowners have only to bear the proportion that 3,500*l.*, the value of their ship, bears to 14,000*l.*, the value of the cargo. To that proposition I could, under no circumstances, assent. Even if my opinion were different, I consider that the owners of the *Prinz Heinrich* have so conducted themselves as to make themselves liable. I refer to the negotiations, the appointment of arbitrators, and the deposit of 2,200*l.* in a bank, all of which circumstances would tend to make the defendants now liable for the entire sum, if they were not so originally. The result has been to put the plaintiffs to rest in this matter, to lead them to believe that their claim was sure. It is wholly unreasonable to expect them, some two years after the suit in law has been decided, to obtain the larger part of the reward by arresting such portions of the cargo

Judgment of  
Butt, J., in  
*The Prinz  
Heinrich*.

(h) 13 P. D. 31. For an earlier *Cumbrian*, 6 Asp. M. L. C. 151.  
decision to the same effect, see *The* (i) At p. 33.

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as they might chance to find after this lapse of time. But, further, I am of opinion that when the captain of a ship reasonably and properly enters into an agreement for the salvage of his ship for a particular sum, he binds the shipowners to pay the agreed amount. The cargo is on board, and the shipowners need not part with it till they have obtained security for any payments which they may have to make, or have made, in respect of it. In this very case the shipowners took a bond from the owners of the cargo for the payment of this salvage. It is said that the case of *The Raisby* (k) is opposed to this view, but I am of opinion that it is inapplicable to the facts of the present case. In *The Raisby* Sir James Hannen points out that, 'the so-called agreement' did not purport to extend the liability of the shipowners, and that it did not carry the matter further than if the captain of the *Raisby* had simply accepted the services of the salving ship. The distinction is thus drawn between an agreement generally to tow or to save a ship, and one for a salvage service for a particular sum. Moreover, there are dicta in the case of *Anderson & Co. v. The Ocean Steamship Co.* (l), in favour of the view I am now expressing. Therefore I am of opinion that this ground of defence fails, and I give judgment for the amount claimed with costs."

The owners of cargo on board the salved ship are not bound by the salvage agreement.

In regard to the owners of the cargo on board a salved ship, the master is not their agent so as to bind them or their cargo by any salvage agreement. "Neither the owners of the ship, nor the master, have authority to bind the goods or the owners of the goods by any contract" (m). If, as happened in the case of *Anderson v. The Ocean Steamship Co.*, referred to in the passage cited above from the judgment in *The Prinz Heinrich*, the owners of a salved ship have paid the salvors the whole of the sum fixed by a salvage agreement which was made by the master of the ship, and then seek to recover from the owners of the cargo, as a contribution in general average, a part of the amount so paid proportionate to the value of the cargo, it is open to the cargo owners to dispute the reasonableness of the agreed salvage remuneration, and to claim, as they successfully

(k) 10 P. D. 114.

(l) 10 App. Cas. 107.

(m) Per Lord Blackburn, *Anderson v. Ocean Steamship Co.*, 10 App. Cas. 107, at p. 117.

did in *Anderson v. The Ocean Steamship Co.*, to contribute only upon the basis of such lesser sum as may be adjudged to be reasonable as regards them. The fact that the shipowners have, under the salvage agreement, become bound to pay and have paid a certain sum is not conclusive, as against the owners of cargo, that the whole of it is chargeable to general average.

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With regard to various salvors, or sets of salvors, if the only relation between them is the temporary association in the work of the salvage service, a salvage agreement made by the master of the vessel in distress with one of them, or, where there are several sets of salvors, with one set of them, binds the rest only if they concur in the making of it, or ratify it by their acts after it has been made. The mere accident of co-operation in the salvage service gives no one of the salvors an implied agency to contract with the representatives of the salvaged vessel on behalf of his co-salvors (*n*).

In regard to salvors, where there are several independent salvors or sets of salvors, the authority of one to bind the rest by a salvage agreement must be proved.

Where the agreement fixing the amount of the salvage remuneration is made, as is usually the case, with the master of a salving vessel, the question arises as to his competency to bind his owners and his crew thereby.

The power of the master of the salving vessel to bind by a salvage agreement.  
(1) His owners.

First, with regard to his owners:—The master has authority, if the occasion arises—but perhaps only in the absence of the shipowner or of means of communication with him (*o*)—to enter into a contract for the performance of salvage services, in the interest of the shipowner; and such a contract usually binds the shipowner (*p*). The master has no authority, however, to bind the shipowner by a salvage contract in respect of past services, where those services, if they stood alone, would give rise to a right to salvage remuneration (*q*). Such services create

(*n*) See *The Charlotte*, 3 W. Rob. 68, at p. 74.

(*o*) *The Elise*, Swab. 436, at p. 440.

(*p*) *The Africa*, 1 Spks. E. & A. 299, at p. 300; *The Elise*, Swab. 436, at p. 440; *The Britain*, 1 W. Rob. 40, at p. 43. Whether the master has power to bind his owners to submit the

remuneration to arbitration, *qu.*: see *The City of Calcutta* (1898), 8 Asp. M. L. C. 442.

(*q*) *The Inchmarsee*, (1899) P. 111 (cited below, p. 253). And see the judgments of Sir F. Jeune in *The Margery*, (1902) P. 157 (cited below, p. 254) and *The Friesland*, (1904) P. 345 (cited below, p. 255).



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vested rights in the shipowner which the master is not competent to bargain away. But the fact that the master is not competent to bind the shipowner in respect of past services will not avoid the whole contract where the contract relates also to future services; and the Court will give effect to that portion of it which relates to future services, unless, of course, it is inequitable (r).

(2) The crew  
of the salving  
vessel.

As to his officers and crew, the authority of the master of the salving vessel to bind them by a salvage agreement was, until recently, a matter of some uncertainty. In *The Elise*, Dr. Lushington, in the course of his judgment (s), described the master of a ship as being "on land as at sea, agent for the crew to bind them by agreement in respect of salvage compensation." His agency for this purpose was recognised also in the course of Sir Robert Phillimore's judgment in *The Macgregor Laird* (t). And in *The Nasmyth* (u), Butt, J., upheld an agreement by the master of the salving ship to perform salvage services for a fixed remuneration which the Court considered fair. On the other hand, both in *The Britain* (x), and in the later case of *The Sarah Jane* (y), Dr. Lushington held that the crew of the salving vessel were not bound by a salvage agreement entered into by the master. In the course of his judgment in the second case (z), the learned judge said: "The question therefore arises, whether the master was authorized to act for the crew, without their consent being directly or indirectly first given. It is unnecessary, I think, to revert to the principles which I examined in the case of *The Britain*, and in other cases, for the purpose of showing that, in all ordinary cases of salvage, neither the owners nor the master has a power of binding the crew without their previous consent."

It seems, however, now to be settled by the judgment of Phillimore, J., in *The Inchmaree* (a), that the decisions in *The Britain* and *The Sarah Jane* are only supportable on the ground that in each case the agreement which was unsuccessfully

(r) *The Inchmaree*, *ubi inf.*

(s) Swab. 436, at p. 440.

(t) W. N. (1867) p. 308.

(u) 10 P. D. 41.

(x) 1 W. Rob. 40.

(y) 2 W. Rob. 110.

(z) *Ubi sup.* at p. 118.

(a) (1899) P. 111. And see the judgments of Sir F. Jeune in *The Margery*, (1902) P. 157, and *The Friesland*, (1904) P. 345, which are cited below at pp. 254, 255, respectively.

set up by the defendants against the claim of dissatisfied members of the crew of the salving vessel, was an agreement made *after* the salvage service had been rendered, and *after* a right to salvage remuneration had arisen.

In *The Inchmaree* the masters of salving vessels had signed *The Inchmaree* agreements in the following terms:—

HULL, 10th January, 1899.

“I, the undersigned master of the tug —, on behalf of myself and the owners and crew of such tug, do hereby agree to accept the sum of 20% per tide, and 150% when floated, in full for all claims for rendering assistance to the stranded vessel *Inchmaree*. The agreement to apply as well to past as to future services, and such sum to be in full for all salvage and other claims on ship, cargo, and freight.”

Phillimore, J., after finding as a fact that the masters of the salving vessels did not agree or intend to agree to sell their past rights, said: “There is the further question of the tug master’s authority. My view about the matter is that, where there is one continuous service, and some small step has been made in that service—a step which of itself would not give any right to salvage even though the vessel should be subsequently salvaged—and at some epoch the master of the salvaged vessel says, ‘Now let us go no further without a bargain to cover what you have done as well as what you are going to do’—then I think it is within the scope of the authority of the master of the salving vessel to enter into a bargain to cover both the past as well as the future services; because the past service does not stand by itself—it has not by itself given any right, that is to say, in such a case there is no assessable value to give to the past service. But where the service is discontinuous with hours between, in which nothing is done at all, and where the past services give, as in this case, vested rights . . . then I do not think that the master of the salving vessel has a right to bargain away the rights of his owner, or that of the crew, for those past services. Still less do I think that he has the right to make it part of the condition upon which he and his co-salvors are

**Chapter IX.** to be employed for the future services. That is a kind of 'truck' which seems to me repugnant to public policy. I think that in this case the masters had no authority to bargain away the past rights of their co-salvors for the sake of being allowed to render the rest of the service. I therefore come to the conclusion that that part of the contract cannot stand, both because it was not agreed to and because the plaintiffs' masters had no authority. But I do not see why the other half of the contract cannot stand by itself" (*b*). And the learned judge held that the amount fixed by the agreement in respect of the subsequent services must stand.

It would appear, therefore, that a salvage agreement made by the master of a salving vessel in respect of past services will not ordinarily bind the crew or the owners; but that where the agreement also relates to future services, the Court will give effect to so much of it as relates to those services, if to that extent it is not inequitable.

**The power of the owners of the salving vessel to bind the master and crew by a salvage agreement.**

The owners of the salving vessel, in this matter of competency to act for the crew, seem to be in the same position as the master. In *The Margery* (*c*), both salving and salvaged vessels were insured by their respective owners in associations, under the articles of which remuneration for salvage services was to be mutually settled by committees of the associations. Sir Francis Jeune (with whose judgment Barnes, J. concurred), after finding that the master and crew of the salving vessel were not parties to such arrangement, and could not be taken to have acquiesced in it, observed: "I am not at all prepared to say that under certain circumstances an agreement made by the owners on behalf of the crew might not bind them, just as an agreement made under certain circumstances by the master may bind the owners. It is clear that if before the salvage service is rendered, the masters of the two ships meet together, they may make an arrangement by which, subject to the jurisdiction of this Court to see whether it is equitable or not, the masters can undoubtedly bind the owners. I should not be prepared to deny that an agreement made under similar circumstances by the owners on behalf of the master and crew might not bind the master and

(*b*) *The Inchmaree*, (1899) P. 111, at pp. 116, 117.

(*c*) (1902) P. 157.

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crew ; but the reason for that is the necessity of the case. The service has to be rendered on the spur of the moment, and if the agreement cannot be made by the only persons who are there to make it, it cannot be made at all. Therefore, *ex necessitate*, an agreement so made binds ; but that is a very different thing from saying that when there is no stress at all, an arrangement made by the owners binds the master and crew, without any notice to the master and crew. That proposition I am not prepared to adopt, nor is it seriously contended " (d).

In the recent case of *The Friesland* (e), shipowners, having been informed by telegraph that their vessel was lying disabled off the south coast of Ireland, agreed with the owners of a tug, known to be in the vicinity of the disabled vessel, that their vessel should be towed to Liverpool by the tug on the usual towage terms. Before, however, the agreement was made, and before the owners of the tug could instruct their tug-master, the tug-master had proceeded to the disabled vessel, and had begun towing her to Liverpool. *The Friesland.*

In an action of salvage brought by the owners, master, and crew of the tug, Sir Francis Jeune, after holding that the owners were bound by the agreement, dealt with the question whether the master and crew were also bound by it in the following terms (f): "The effect of the authorities appears to me to be this, that before such a service is performed, the owners have authority to bind the master and crew. On what principle that rests I am not very careful to inquire. It may be that it is to be put down to the principle that in the particular circumstances, if a contract is to be made it must be made by the owners without communication with the master and crew, because no communication can be made with them ; and therefore it is just like a bargain made by the master *ex necessitate*, which binds the owners in the particular circumstances of the case. That may be the principle which enables the owners to bind the master and crew for future services, though they in no way acquiesce. Again, that may not be the real principle. It may be that when the master enters into service there is an implied contract by which the owners can bind him. It can

(d) *Ibid.* at p. 165.

(e) (1904) P. 345.

(f) *Ibid.* at p. 361.

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only apply, however, to ordinary services. Where there is something special, out of the course of a man's ordinary employment, I should be very slow to think there could be any authority of that kind, and I am not sure whether all salvage would not be considered to be outside an ordinary agreement. I think that the authorities are pretty clear that as regards future services the owners can bind the master and crew by an agreement to which the master and crew are no parties, but I think it is otherwise as to past services. Here services had been done, or partly done, of a salvage kind, giving independent rights, and the owners cannot bargain away the vested rights of the master and crew by a bargain in which the master and crew do not acquiesce. That I think is the result of the various authorities upon this point." Later in his judgment, the learned President said (g) : "Was this a discontinuous service in the sense that there was a discontinuance at the time the agreement between the owners was made, and did that agreement apply only to the future and not to what had happened in the past? I do not think so. It seems to be a continuous service in fact, of which a substantial part had been performed before the agreement was made." And he accordingly dealt with the claims of the master and crew on the footing of an ordinary salvage service.

*Seemle that the master of a King's ship ought not to make a salvage agreement.*

The captain of a King's ship which has been despatched upon a salvage service, probably ought not to make any agreement with the master of the vessel to be salvaged as to the amount of salvage remuneration (h).

**B. OF AGREEMENTS FOR APPORTIONMENT OF SALVAGE.**

Generally upheld if made honestly, and the parties

It is not an uncommon thing for those who are interested in the salvage, either before (i) or after (k) the performance of the salvage service, to agree amongst themselves as to its apportionment. If the several parties so agreeing are in such an independent position that they can sufficiently defend their own in-

(g) *Ibid.* at p. 353.

(h) See per Baggallay, J. A., and Lush, J., *The Cargo ex Woosung*, 1 P. D. 260.

(i) See, for examples, *The James*

*Armstrong*, 3 Asp. M. L. C. 46; *The Sunnyside*, 8 P. D. 137; *The Wilhelm Tell*, (1892) P. 337.

(k) See, for example, *The Afrika*, 5 P. D. 192.

terests, and the agreement is not vitiated by fraud or by the mis-statement or concealment of material facts, the Court will generally enforce it.

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agreeing are in an independent position.

Example.

Thus, in *The James Armstrong* (1), an agreement as to the apportionment of the salvage which should be awarded, made between the owners of a steamship and the owners of several pilot-cutters, which together salvaged a derelict off the Scilly Islands, was upheld by Sir Robert Phillimore. But, as in the case of contracts fixing the amount of salvage remuneration, so in agreements for apportionment, the Court of Admiralty has always asserted its jurisdiction to set the agreement aside if it deems it to be in any way inequitable (m), and, *a fortiori*, if it has been procured by any fraudulent or other improper action.

But, if it judges the agreement for any reason inequitable, the Court will disregard the agreement.

Thus, in *The Enchantress*, Dr. Lushington held that the Court of Admiralty must refuse to sanction or enforce, because inequitable, an alleged agreement, by which it was said that the plaintiffs, three masters of Lowestoft fishing luggers, had bound themselves to accept such remuneration as the agent of the owners of the salvaging vessel should think fit to allot to them. "The Court has held, and must hold," said the learned judge, . . . "that agreements limiting the proportion of salvage money are to be maintained only so far as they are really equitable. I am of opinion that the alleged agreement in this case is open to the objection that it is inequitable, and that, even if made, it is not binding on the plaintiffs."

Example.

In judging of agreements for apportionment, as in judging of agreements fixing the amount of salvage, the Court will not set the agreement aside merely because the award of the Court, if there had been no agreement, might have been somewhat different from the agreement (n).

The Court of Admiralty has always recognized the fact that seamen, by reason of their inferior position and their ignorance, are liable to be placed at a disadvantage in dealing with the owner or the master of their ship as to the division of sal-

The Court watches carefully the interests of seamen.

(1) 3 Asp. M. L. C. 46.

Phillimore, *The Afrika*, 5 P. D. 192, at p. 196.

(m) See per Dr. Lushington, *The Enchantress*, Lush. 93; per Sir R.

(n) See per Sir R. Phillimore, *The Afrika*, 5 P. D. 192, at p. 196.

**Chapter IX.** vage, and accordingly it scrutinizes an alleged contract of apportionment with especial care in reference to their interest. "The policy of the law is to protect seamen from improvident arrangements, and to encourage their exertions to save life and property" (o). In *The Beulah* (p), Dr. Lushington altered, as inequitable towards the seamen, an apportionment which was based upon a scale of distribution established in the service of the owners of the salving vessel, and he decreed an apportionment more favourable to the seamen and less favourable to the master of the salving vessel.

**Examples.**

In *The Louisa* (q), the same learned judge treated as inequitable, and refused to sanction, an agreement in reference to the division of salvage rewards, which was stated to have been made between the owners and the crews of three fishing smacks at the time of the hiring of the crews; and by his decree he nearly doubled the amount which the masters, mates, seamen, and apprentices would have taken according to the agreement scale, whilst he reduced the owners' proportion from nearly two-thirds of the whole salvage remuneration to about seven-sixteenths.

Avoidance by statute of agreements whereby seamen bind themselves to forego any share in salvage reward.

With regard to agreements by which seamen bind themselves to forego any share in the division of salvage, the Legislature itself has intervened in the interest of seamen to protect them from the consequences of their own weakness or improvidence. By the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 156, sub-s. (1), reproducing the Merchant Shipping Act, 1854, s. 182, it is enacted—in accordance with the ancient practice of the Court of Admiralty (r)—that a seaman shall not by any agreement abandon any right he may have or obtain in the nature of salvage; and every stipulation in any agreement inconsistent with this provision shall be void.

But the same section of the Act goes on to declare (sub-s. (2)), that nothing therein shall apply to a stipulation made by the seamen belonging to any ship which, according to the terms of

(o) Per Barnes, J., *The Wilhelm Tell*, (1892) P. 337, at p. 348.

(p) 1 W. Rob. 477.

(q) 2 W. Rob. 22.

(r) *The Enchantress*, Lush. 93, at p. 96. As regards apprentices, *The Columbine*, 2 W. Rob. 186.

the agreement (s), is to be employed on salvage service with respect to the remuneration to be paid to them for salvage services to be rendered by that ship to any other ship (t). Chapter IX.

By sect. 212 it is further enacted that no assignment or sale of salvage payable to a seaman or apprentice made prior to the accruing thereof shall bind the person making the same, and that no power of attorney or other authority for the receipt of any such salvage shall be irrevocable.

In the case of *The Rosario* (u), it was decided by Sir Robert Phillimore that sect. 182 of the Merchant Shipping Act, 1854, which, as has been already stated, is reproduced in sect. 156 of the Act now in force, applied not only to prior agreements, but also to agreements made after salvage services have been performed; and, therefore, that where some of the crew of the salving vessel sued the owners, who had been paid the salvage remuneration, in an action for distribution of salvage, the defendants' plea that, after the performance of the salvage service and before the remuneration had been paid to them as agreed, the plaintiffs had, for valuable consideration, assigned to the defendants their interest in the remuneration due, or to become due, in respect of the salvage services, disclosed no defence to the action. But where, after a lump sum for salvage had been paid to the owners of the salving ship, the seamen employed a solicitor to settle for them with the owners as to their share of it, and to make an agreement for that purpose, and he agreed to accept, and accepted, on their behalf, in satisfaction and discharge of their claim, a sum which the Court (Sir Robert Phillimore) found to be not extravagantly small, it was held that the agreement was not void under sect. 182, and must be upheld, although if the matter had not been concluded by the agreement, the Court might have apportioned to the seamen a somewhat larger share than the agreement gave them (x).

The statute applies to an agreement made after as well as an agreement made prior to the performance of the salvage service.

But not where a settlement has been effected by a solicitor employed by the seamen to negotiate with the owners for advising the salvage.

In *The Saltburn* (y), decided under the same section, it was held that an agreement between owners and crew that before

(s) Neither the stipulation nor the agreement need be in writing: *The Pride of Canada*, Br. & L. 208.

(t) This sub-section reproduces 25 & 26 Vict. c. 63, s. 18.

(u) 2 P. D. 41.

(x) *The Afrika*, 5 P. D. 152.

(y) (1894) 7 Asp. M. L. O. 474.

And see *The Wilhelm Tell*, (1892) P. 337.



**Chapter IX.** the apportionment of the salvage award the owners shall be entitled to deduct from the amount of the award the cost of repairing damage sustained by the salving vessel in the performance of the salvage operations is "inconsistent with this provision," and therefore void.

M. S. Act,  
1894, s. 156,  
sub-s. (2),  
considered.

The Merchant Shipping Act, 1894, s. 156, sub-s. (2) (see above, p. 258), while excepting from the operation of sub-s. (1) stipulations with respect to salvage remuneration made by the seamen belonging to a ship which is to be employed on salvage service, does not make all agreements of the class therein specified binding or conclusive (provided, of course, that they are honestly obtained from the seamen), but simply renders them not illegal. The Court is as free as it was before any legislation on the subject to refuse to sanction or enforce any such agreement if it appears to the Court to be inequitable in the circumstances of the particular case. This was the interpretation placed by Sir Robert Phillimore in *The Ganges* (z) on the similar provision of the 25 & 26 Vict. c. 63, s. 18. In that case the plaintiff was temporary master of a steam-tug, in the place of one Butterfield, and as such, without any extraordinary exertion or peril, he assisted in rendering salvage services to a vessel in distress near the Hasborough Sands. The tug belonged to a Great Yarmouth steam-tug company, whose business it was in great part to render salvage services and towage services in the nature of salvage. The crews of the company's tugs were, by a special agreement, paid wages and also a percentage on all towage and salvage money earned for the company. The plaintiff knew that Butterfield was employed under this agreement when he took his place, and he had always acquiesced in payment being made according to this agreement; but he claimed, in this action, a share in the salvage reward independently of the agreement. The Court held that the agreement, as it did not appear to be inequitable, either in itself or by reason of any special circumstances, was valid, and that the plaintiff was bound by it, and therefore could not claim salvage.

In all such cases, strict proof of the agreement will be required. In *The Pride of Canada* (a), the attempt to prove a

(z) L. R. 2 A. & E. 370, at p. 374.

(a) Br. & L. 210.

parol agreement for the waiver of claims of salvage on the part of seamen employed in salvage services, on board of tugs of the United Steam-tug Co., was held by Dr. Lushington to have failed.

In *The Wilhelm Tell* (b), a steam trawler, the crew of which had signed articles containing a clause that they were to share in any salvage award according to specified proportions, was held not to be a ship "which according to the agreement is to be employed in salvage service." "She was, in fact, to be employed, according to the terms of the agreement, in trawling in the North Sea, and the clause as to salvage was only inserted in order to deal with the case of an apportionment of any salvage which she might have the good fortune to earn" (c).

It is to be noticed that masters are unaffected by these statutory provisions as to agreements by seamen in respect of salvage remuneration (d). For by sect. 742 of the Merchant Shipping Act, 1894, the term "seaman" does not include master. It follows that an agreement made by a master to abandon his right to salvage reward, or an assignment or sale by him of his share of salvage reward before its accrual, if honestly made and equitable, will be binding on him.

The statutory provisions with regard to agreements by seamen do not apply to masters.

It remains only to mention the case of alleged customary agreements—agreements which the Court is asked to imply from the usage of a particular occupation or a particular locality, when a question as to the division of salvage remuneration arises in regard to persons engaged in that occupation or belonging to that locality. There is no doubt that in some places on the coast a conventional scale of distribution of salvage reward does exist amongst the boatmen, smacksmen, and fishermen (e). But the Court of Admiralty would uphold such a customary rate of apportionment only when it was shown to be in all respects equitable. Certainly, on principle, and quite apart from the Merchant Shipping Act, 1894, s. 156, which has been already considered, it would not sanction a custom by which one who

As to implied agreements, when a usage of a particular occupation or locality affects apportionment.

The Court would uphold such usage only if equitable.

(b) (1892) P. 337.

(c) *Ibid.* at p. 347.

(d) See *The Wilhelm Tell*, (1892) P. 337, at p. 347.

(e) See Board of Trade Instructions to Receivers of Wreck and Other Officers, 1895, Art. 176 (b).

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It must not exclude from share in salvage one who has assisted in the salvage service.

*The John.*

*The Sarah.*

*The Sandsend.*

actually rendered salvage service would be shut out from all share in the reward. In the case of a salvage service rendered by a fishing smack of Hull, the crew consisted of a master, two able seamen, and a boy. The master and seamen were paid by shares of the earnings, and the boy by weekly wages. In a suit by the boy for distribution of salvage it was alleged that a custom existed at Hull whereby, when persons are engaged in the fishing trade, those who receive wages are excluded from reward for salvage services. The Court held that no such custom could be recognised as a bar to salvage (*f*). On the other hand, "local and customary agreements, if equitable, such as that where there is a lifeboat company, those who stay shall be rewarded as those who go, the Court will favourably consider" (*g*). In *The Sarah* (*h*), a custom was alleged to exist at the port of Liverpool, with regard to steamtugs belonging to that port, fixing, according to a percentage scale, the share to be taken by the crew of a tug in remuneration awarded in respect of salvage services. The Court, however, was relieved from any necessity to decide as to the validity of the custom, by an arrangement between the parties, with the consent of the Court, that the claimants should be remunerated according to the percentage scale, and with such further sum as the Court should think just. The Court awarded to three of the plaintiffs, beyond the percentage, special gratuities because they had gone on board the salvaged vessel when deserted by her own crew, and had rendered special services. In *The Sandsend* (*i*), a custom was alleged to exist on the East Coast that when boatmen and a tug go out together to perform salvage services they share salvage remuneration equally; but the Court, while not inclined to hold such a custom inequitable, found that its existence had not been proved.

(*f*) *The John*, 28 Jan. 1846, Pritch. Adm. Dig. 3rd ed. (1887) vol. 2, p. 1890.

(*g*) Per Dr. Lushington, *The En-*

*chantress*, Lush. 93, at p. 97.

(*h*) 3 P. D. 39.

(*i*) Shipp. Gaz. Weekly Summary, May 22, 1903.

## APPENDICES.

The following are particulars of some modern cases in which the salvage are necessarily incomplete ; but, such as they are.

Case.	REPORT.	Time of Service.
<i>La Champagne</i> (Passenger S.S.) ..	Shipp. Gaz. Weekly Summary, June 17th, 1898 ..	3 days, 7 hrs.
<i>The Tarentula</i> (S.S.) ..	<i>Ibid.</i> , November 3rd, 1899 ..	4 days.
<i>The Gulf of Genoa</i> (S.S.) ..	<i>Ibid.</i> , June 1st, 1900 ..	4½ days.
<i>The Carour</i> (S.S.) ..	<i>Ibid.</i> , April 26th, 1901 ..	8 days.
<i>The Kong Alf</i> (S.S.) ..	<i>Ibid.</i> , June 28th, 1901 ..	2½ days.
<i>The Peninsula</i> (Passenger S.S.) ..	<i>Ibid.</i> , July 12th, 1901 ..	6 days.
<i>The Washwater</i> (S.S.) ..	<i>Ibid.</i> , November 8th, 1901 ..	4 days.
<i>The Hatdonhall</i> (S.S.) ..	<i>Ibid.</i> , November 8th, 1901 ..	11 days.
<i>The Broadgarth</i> (S.S.) ..	<i>Ibid.</i> , November 8th, 1901 ..	2 days.
<i>The Shock</i> (S.S.) ..	<i>Ibid.</i> , February 21st, 1902 ..	5 days.
<i>The Emma</i> (S.S.) ..	<i>Ibid.</i> , March 21st, 1902 ..	10 days.
<i>The Philadelphia</i> (S.S.) ..	<i>Ibid.</i> , April 11th, 1902 ..	4 days.
<i>The Etruria</i> (Passenger S.S.) ..	<i>Ibid.</i> , April 18th, 1902 ..	11 days.
<i>The Border Knight</i> (S.S.) ..	<i>Ibid.</i> , August 1st, 1902 ..	5 days.
<i>The Mariutels</i> (S.S.) ..	<i>Ibid.</i> , October 31st, 1902 ..	6½ days.
<i>The Persa</i> (S.S.) ..	<i>Ibid.</i> , November 7th, 1902 ..	4 hours.
<i>The Belpeland</i> (Passenger S.S.) ..	<i>Ibid.</i> , November 28th, 1902 ..	6½ days.
<i>The Bovic</i> (S.S.) ..	<i>Ibid.</i> , January 23rd, 1903 ..	5 days.
<i>The Scotia</i> (Passenger S.S.) ..	<i>Ibid.</i> , February 6th, 1903 ..	39 hours.
<i>The Solo</i> (S.S.) ..	<i>Ibid.</i> , March 27th, 1903 ..	2 hours.
<i>The Wakato</i> (S.S.) ..	<i>Ibid.</i> , April 9th, 1903 ..	3 days.
<i>The Battersea</i> (S.S.) ..	<i>Ibid.</i> , April 17th, 1903 ..	38 hours.
<i>The Regni</i> (S.S.) ..	<i>Ibid.</i> , June 19th, 1903 ..	12 hours.
<i>The Dénombre</i> (S.S.) ..	<i>Ibid.</i> , June 19th, 1903 ..	26 hours.
<i>The Ravenna</i> (Passenger S.S.) ..	<i>Ibid.</i> , November 6th, 1903 ..	32 hours.
<i>The Malin Head</i> (S.S.) ..	<i>Ibid.</i> , November 27th, 1903 ..	92 hours.
<i>The Germania</i> (S.S.) ..	(1904) P. 131 ..	9 hours.
<i>The William Adamson</i> (S.S.) ..	Shipp. Gaz. Weekly Summary, Jan. 22nd, 1904 ..	32 hours.
<i>The Valhal</i> (S.S.) ..	<i>Ibid.</i> , April 29th, 1904 ..	36 hours.
<i>The Iris</i> (S.S.) ..	<i>Ibid.</i> , May 13th, 1904 ..	36 hours.
<i>The Almond Branch</i> (S.S.) ..	<i>Ibid.</i> , May 20th, 1904 ..	2½ days.
<i>The Pfalz</i> (Passenger S.S.) ..	<i>Ibid.</i> , May 20th, 1904 ..	34 hours.
<i>The Bulweray</i> (Passenger S.S.) ..	<i>Ibid.</i> , June 17th, 1904 ..	24 hours.
<i>The Bertha</i> ..	<i>Ibid.</i> , July 15th, 1904 ..	—
<i>The Glenloch</i> (S.S.) ..	<i>Ibid.</i> , February 3rd, 1905 ..	8 days.
<i>The Toscana</i> (Passenger S.S.) ..	(1905) P. 148 ..	2 days.
<i>The Goggerri</i> (S.S.) ..	Shipp. Gaz. Weekly Summary, May 19th, 1905 ..	6 hours.
<i>The Rapel</i> (S.S.) ..	<i>Ibid.</i> , May 26th, 1905 ..	7½ hours.
<i>The Teutonia</i> (S.S.) ..	<i>Ibid.</i> , November 10th, 1905 ..	3 days.
<i>The Guanche</i> (S.S.) ..	<i>Ibid.</i> , November 15th, 1905 ..	1 hour.
<i>The Bremen</i> (Passenger S.S.) ..	<i>Ibid.</i> , January 26th, 1906 ..	3½ days.
<i>The Italia</i> (Passenger S.S.) ..	<i>Ibid.</i> , May 25th, 1906 ..	2 days.
<i>The Farrington</i> (S.S.) ..	<i>Ibid.</i> , June 1st, 1906 ..	15 hours.
<i>The Craigellachie</i> (S.S.) ..	<i>Ibid.</i> , June 22nd, 1906 ..	21 hours.
<i>The Lincoln</i> (S.S.) ..	<i>Ibid.</i> , July 13th, 1906 ..	2 days.
<i>The Alcores</i> (S.S.) ..	<i>Ibid.</i> , July 20th, 1906 ..	1 hour.
<i>The Hohenzollern</i> (Passenger S.S.) ..	<i>Ibid.</i> , August 10th, 1906 ..	48 hours.
<i>The Ivydene</i> (S.S.) ..	<i>Ibid.</i> , November 2nd, 1906 ..	about 65 hrs.
<i>The Poseidon</i> (S.S.) ..	<i>Ibid.</i> , February 1st, 1907 ..	33 hours.
<i>The Bretland</i> (S.S.) ..	<i>Ibid.</i> , February 1st, 1907 ..	78 hours.
<i>The America</i> (Passenger S.S.) ..	<i>Ibid.</i> , February 8th, 1907 ..	7 days.
<i>The Lincluden</i> (S.S.) ..	<i>Ibid.</i> , February 8th, 1907 ..	3½ to 4 days.

(a) A full list of salvage-towage cases up to 1887 will be

## DIX A.

services mainly consisted of towing disabled vessels (a). The particulars they form material for interesting comparison.

Distance Towed.	Weather.	Value Salvaged.	Value Salvor.	Loss, Damage, or Detention of Salvor.	Award.
		£	£		£
497 miles	Bad.	410,000	60,471	3½ days; £172 expenses.....	15,000
620 "	Moderate.	141,631	252,520	8 days; £720 expenses .....	7,500
450 "	Rough.	120,972	164,667	8 days; losses and expenses, £1,093.....	7,000
770 "	Moderate.	92,500	79,025	5 days.....	4,000
180 "	Rough.	5,130	3,000	4 days' fishing.....	685
972 "	Fair.	29,000	67,231	12½ days; £309 expenses and damage .....	3,200
380 "	Moderate.	27,730	15,000	£100 expenses.....	1,750
800 "	Bad.	26,500	118,891	7 days; £550 expenses .....	4,550
274 "	Rough.	20,250	30,000	8 days; damage to machinery and rudder.....	2,100
332 "	Rough.	76,380	38,865	10 days; £229 expenses.....	5,000
1,253 "	Rough.	28,400	53,016	8 days .....	4,600
540 "	Rough.	109,531	78,049	4 days; £317 expenses, exclusive of coal & stores.	6,000
780 "	Rough.	214,827	93,200	12 days; £300 expenses, exclusive of coal & stores.	11,000
480 "	Moderate.	40,340	80,147	9 days; £166 expenses, exclusive of coal.....	3,250
600 "	Rough.	149,693	241,400	5 days; £192 expenses .....	7,000
—	Fair.	25,340	130,000	6 hours; £35 expenses .....	700
709 "	Fair.	31,504	45,524	10 days; £211 expenses .....	3,600
867 "	Fair.	30,246	248,960	10 days .....	7,000
190 "	Moderate.	25,193	16,810	Expenses and damage, £227.....	2,000
6 "	Bad.	27,000	13,500	—	1,250
460 "	Moderate.	140,816	167,500	—	5,500
230 "	Rough.	14,000	12,000	—	1,100
60 "	Rough.	8,501	11,580	24 hours .....	450
106 "	Rough.	52,800	142,500	3 days .....	2,000
73 "	Moderate.	50,725	123,965	29 hours .....	2,250
533 "	Rough, fog.	27,500	91,301	2 days; £97 expenses.....	3,700
20 "	Rough.	8,500	5,450	Depreciation of cargo, £196 .....	750
114 "	Rough.	13,498	85,200	—	950
175 "	Rough.	2,307	23,649	1½ days.....	450
90 "	Rough.	R.T.932	10,000	3 days .....	950
265 "	Moderate.	69,500	36,000	4½ days .....	2,700
56 "	Rough.	140,000	37,800	3½ days.....	7,500
118 "	Rough.	63,304	21,895	2½ days; £80 expenses .....	2,000
150 "	Moderate.	1,250	5,500	3 days' fishing and market lost.....	150
812 "	Rough.	148,008	131,000	7 days; £361 expenses .....	7,500
195 "	Moderate.	87,437	68,688	73 hours; £13 expenses .....	3,000
25 "	Fair.	13,700	35,725	30 hours; £31 expenses.....	700
16 "	Bad.	8,025	79,486	—	800
470 "	Moderate.	15,000	36,045	1 day.....	1,000
—	Moderate.	5,700	35,505	—	Tender £150 upheld
280 "	Fair, fog.	239,504	68,000	6 to 7 days; loss of chartered cargo; £130 damage.	5,000
190 "	Moderate.	83,940	109,000	3 days .....	3,750
12 "	Moderate.	20,000	42,000	—	Tender £1,000 upheld
85 "	Moderate.	83,597	206,060	16 hours .....	1,200
120 "	Moderate.	33,000	39,289	4½ days; £150 expenses .....	1,750
5 to 6 "	Rough.	3,767	211,800	2 hours .....	300
—	Moderate.	61,453	53,550	3 days.....	2,700
240 "	Fair.	28,000	14,700	—	2,500
145 "	Rough.	31,234	93,000	£500 expenses and damage .....	1,900
140 "	Rough, fog.	21,805	3,500	£100 expenses & damage; loss of 10 days' fishing.	1,000
1,100 "	Fair.	36,500	85,000	£385 expenses; 6 days .....	2,000
200 "	Rough.	122,051	68,000	£250 expenses .....	4,500

found in Pritchard's Adm. Digest, 3rd edition.

## APPENDIX B.

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### INTERNATIONAL CONVENTION FOR THE UNIFICATION OF THE LAW OF SALVAGE.

At a Diplomatic Conference held at Brussels in October, 1905, for the consideration of proposals formulated by the International Maritime Committee for the establishment of uniform legislation with regard to collisions and salvage at sea, the following Convention was adopted as the basis of the unification of the law of salvage :—

#### ARTICLE 1.

- (a) No distinction shall henceforth exist between assistance and salvage. (b) The word salvage in this code includes assistance. (c) Salvage services rendered to sea-going vessels and their cargoes, and similar services rendered by sea-going vessels to inland craft, shall be regulated by the following provisions, without regard to the waters in which the services shall have been rendered.

#### ARTICLE 2.

- (a) Every salvage service which, in fact, contributes to the safety of the salvaged property confers a right to just remuneration. (b) Nothing is due if the assistance rendered does not contribute to safety as aforesaid. (c) In no case shall the award exceed the salvaged value of the property.

#### ARTICLE 3.

The following persons are not entitled to any remuneration, that is to say—(a) persons who have taken part in the salvage operations contrary to an express and reasonable prohibition by the salvaged vessel; (b) persons who have fraudulently secreted the salvaged property or any portion thereof.

#### ARTICLE 4.

A tug has no right to salvage remuneration in respect of its tow, unless such services are of so exceptional a character as not to fall within the scope of the contract of towage.

## ARTICLE 5.

The fact that both the salvaging and salvaged vessels are the property of the same owner does not bar the right to salvage remuneration.

## ARTICLE 6.

The amount of the salvage remuneration shall be determined by agreement between the parties ; or in default of such agreement by the Court.

## ARTICLE 7.

Every salvage agreement entered into in the hour of danger, and under its influence, may, on the application of either party, be modified by the Court, if in its opinion the bargain so made is inequitable.

## ARTICLE 8.

The remuneration is fixed by the Court according to the circumstances of the case, taking into consideration :—(a) Firstly, the success achieved, the efforts and merits of the salvors, the danger run by the salvaged vessel and her cargo, and by the salvors and their vessel, also the expenses incurred and damage suffered by the salvors, due regard being had to any special appropriation of the salvor's vessel for salvage purposes ; (b) secondly, the value of the property saved and of the salvor's vessel.

## ARTICLE 9.

The action for salvage remuneration is subject to a prescription of two years from the date when the salvage services were ended. Provided always that :

- (a) The grounds upon which such prescription may be suspended or interrupted shall be determined by the law of the Court where the case is tried.
- (b) The fact that the plaintiff has not had a reasonable opportunity of seizing the salvaged vessel within the territorial waters of the State where he is domiciled or has his principal place of business may be deemed to be a sufficient ground for the suspension of the prescription imposed by this Article.

## ARTICLE 10.

- (a) The master of every ship shall, if and so far as he can do so without serious danger to his own vessel, crew and passengers, render assistance to every person, even an enemy, found at sea in a position in which his life is in danger.
- (b) The owner of the vessel shall not be held personally responsible for or by reason of any breach by his master of the preceding provision.



## ARTICLE 11.

The High Contracting Parties whose laws do not punish infringements of the preceding Articles agree to take or to propose to their respective legislatures steps necessary for the punishment of such infringements. The High Contracting Parties will as soon as possible communicate to one another the laws which already may have been promulgated, or are intended to be promulgated, to give effect to the foregoing provision.

## ARTICLE 12.

The present Convention is without prejudice to the provisions of national legislations or of international treaties for the organisation of salvage services by or under the control of public authorities.

The provisions respecting salvage remuneration do not refer to life salvage, and are without prejudice to the provisions of national laws relating thereto.

## ARTICLE 13.

The present Convention does not apply to ships of war or to national vessels engaged solely in the public service.

## ARTICLE 14.

- (1) Save as next hereinafter mentioned the rights and liabilities of all parties interested shall be regulated by the provisions of the present Convention—(a) when either the salvors' vessel or the salvaged vessel belongs to one of the Contracting States; (b) in all other cases in which the national law shall decide that the provisions hereof are applicable.
- (2) Article 10 is applicable only between vessels belonging to Contracting States: nevertheless, nothing herein contained shall be construed in any way to limit the provisions of national laws relating thereto, if any.

## ARTICLE 15.

The delegates of the Contracting States shall, three years after the present Convention comes into force, meet at Brussels with the object of considering what improvements may be effected, and especially of extending, if possible, the sphere of its application.

## ARTICLE 16.

States not having signed the present Convention shall at their request be admitted to become parties thereto. Such adhesion

shall be notified through diplomatic channels to the Belgian Government, and by it to each of the other Governments; it shall become effective one month after the despatch of the notification issued by the Belgian Government.

#### ARTICLE 17.

The present Convention shall be ratified, and the ratification shall be deposited at Brussels as soon as possible. At the expiry of a period of two years, counting from the day of the signature of the Convention, the Belgian Government shall enter into relations with the other Governments, which may have declared their readiness to ratify it, with the object of determining whether it is then desirable to put it into force. In case it be so decided, the ratifications shall immediately be deposited, and the Convention shall take effect one month after such deposit. The protocol shall remain open for another year in favour of States represented at the Brussels Conference who may not then have ratified; after that period such States can be admitted only in the manner indicated in Article 14.

#### ARTICLE 18.

In case one or other of the Contracting Parties should renounce the present Convention, such renunciation shall have no effect until one year after the day on which it has been advised to the Belgian Government, and the Convention shall remain in force between the remaining Contracting Governments.

In witness whereof the plenipotentiaries of the several States have signed the present Convention and attached their seal thereto.

## APPENDIX C.

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### SALVAGE AGREEMENT ON BASIS OF LLOYD'S STANDARD FORM OF "NO CURE—NO PAY" AGREEMENT.

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IT IS AGREED between            acting for the owners of the ship and her cargo according to their respective interests and (hereinafter called "the contractor") that the latter shall endeavour to save the said vessel and her cargo and to take the same into            or such other place as may be hereafter agreed between the parties hereto. The said services shall be salvage services and shall be rendered upon and in accordance with the terms of the Standard Form of "No Cure—No Pay" Agreement published by the Committee of Lloyd's, the provisions of which shall apply to this Agreement as if actually inserted herein.

The remuneration demanded by the contractor and which, subject to the provisions of the said Standard Form, shall be paid to him for his services is £            in case of success, and a maximum of            per cent. of the value or proceeds of the property salvaged in case of only partial success.

Subject to the provision of the Standard Form the contractor shall have a lien on the property salvaged for his remuneration.

---

## STANDARD FORM OF SALVAGE AGREEMENT (a)

*(Approved and published by the Committee of Lloyd's).*

No CURE—No PAY.

On board the .  
Dated 190 .

IT IS HEREBY AGREED between Captain . of the . (afterwards called "the master") and . (afterwards called "the contractor") as follows:—

1. The contractor agrees to use his best endeavours to save the . and her cargo and take her into . or other place to be hereafter agreed with the master, providing at his own risk all proper steam and other assistance and labour. The services shall be rendered and accepted as salvage services upon the principle of "no cure—no pay" and the contractor's remuneration in the event of success shall be £ ., that being the sum demanded by him, unless this sum shall afterwards be objected to as hereinafter mentioned in which case the remuneration for the services rendered shall be fixed by arbitration in London in the manner hereinafter prescribed: and any other difference arising out of this agreement or the operations thereunder shall be referred to arbitration in the same way.

2. The contractor may make reasonable use of the vessel's gear anchors chains and other appurtenances during and for the purpose of the operations free of costs but shall not unnecessarily damage abandon or sacrifice the same or any other of the property.

3. Notwithstanding anything hereinbefore contained should the operations be only partially successful without any negligence or want of ordinary skill and care on the part of the contractor or of any person by him employed in the operations, and any portion of the vessel's cargo or stores be saved by the contractor, he shall be entitled to reasonable remuneration not exceeding a sum equal to . per cent. of the estimated value of the property saved at . or if the property saved shall be sold there then not exceeding the like percentage of the net proceeds of such sale after deducting all expenses and customs duties or other imposts paid or incurred thereon but he shall not be entitled to any further remuneration reimbursement or compensation whatsoever and such reasonable remuneration shall be fixed in case of difference by arbitration in manner hereinafter prescribed.

4. The contractor engages not to arrest or detain the vessel or cargo or property saved except in the event of any attempt being

(a) See, on this agreement, *The City of Newcastle* (1898), 8 Asp. M. L. C. 442 (C. A.).

made to remove the same from                      without his consent before the said sum of £                      or the said maximum remuneration mentioned in Clause 3 (as the case may be) has been deposited in cash with the Committee of Lloyd's to abide the result of the arbitration hereinbefore mentioned, or such security or bail therefor as the Committee may in their absolute discretion consider sufficient has been given to them to abide the like result. Subject to this agreement the contractor shall have a lien on the property saved for his remuneration.

5. The Committee of Lloyd's after the expiry of forty-two days from the date of the deposit having been made or security or bail having been given as provided for in Clause 4 shall realize or enforce the same and pay over the amount thereof to the contractor unless they shall meanwhile have received written notice of objection and a claim for arbitration from any of the parties entitled and authorized to make such objection and claim or unless they shall themselves think fit to object and demand arbitration. The receipt of the contractor shall be a good discharge to the Committee for any monies so paid and they shall incur no responsibility to any of the parties concerned by making such payment and no objection or claim for arbitration shall be entertained or acted upon unless received by the Committee within the forty-two days above mentioned.

6. In case of arbitration the Committee of Lloyd's shall forthwith upon the publication of the award pay to the contractor out of the cash deposit, or by realizing or enforcing the security or bail the amount awarded to him, and shall pay the balance (if any) of the deposit to the depositors whose receipts shall be a good discharge for the same. If the award increases the remuneration the parties mentioned in Clause 12 shall pay the difference to the contractor.

7. The Committee of Lloyd's shall not be in any way responsible for the sufficiency of any security or bail accepted by them, nor for the default or insolvency of any person giving security or bail.

8. In case of objection being made and arbitration demanded, the remuneration for the services shall be fixed by the Committee of Lloyd's as arbitrators or at their option by an arbitrator to be appointed by them, unless they shall within thirty days from the date of this agreement receive from the contractor a written or telegraphic notice appointing an arbitrator on his own behalf, in which case such notice shall be communicated by them to the managing owner of the vessel and he shall within fifteen days from the receipt thereof give a written notice to the Committee of Lloyd's appointing another arbitrator on behalf of all the parties interested in the property saved; and if the managing owner shall fail to appoint an arbitrator as aforesaid the Committee of Lloyd's shall appoint an arbitrator on behalf of all the parties interested in the property saved or they may if they think fit direct that the con-

tractor's nominee shall act as sole arbitrator; and thereupon the arbitration shall be held in London by the arbitrators or arbitrator so appointed. If the arbitrators cannot agree they shall forthwith notify the Committee of Lloyd's who shall thereupon either themselves act as umpires or shall appoint some other person as umpire. Any award of the arbitrators or arbitrator or umpire shall be final and binding on all the parties concerned and they or he shall have power to obtain call for receive and act upon any such oral or documentary evidence or information (whether the same be strictly admissible as evidence or not) as they or he may think fit, and to conduct the arbitration in such manner in all respects as they or he may think fit, and to maintain reduce or increase the sum demanded by the contractor. The arbitrators or arbitrator and the umpire (including the Committee of Lloyd's if they act in either capacity) may charge such fees as they may think reasonable, and the Committee of Lloyd's may in any event charge a reasonable fee for their services in connection with the arbitration, and all such fees shall be treated as part of the costs of the arbitration and award and shall be paid by such of the parties as the award may direct. Save as aforesaid the statutory provisions as to arbitration for the time being in force in England shall apply.

9. The Committee of Lloyd's may in their discretion out of the cash deposit or out of the security or bail (which they may realize or enforce for that purpose) pay to the contractor on account before the publication of the award such sum as they may think reasonable on account of any out-of-pocket expenses incurred by him in connection with the services.

10. The master is not authorized to make or give and the contractor shall not demand or take any payment draft or order for or on account of the remuneration.

11. Any dispute between any of the parties interested in the property salvaged as to the proportions in which they are to contribute to the cash deposit or the sum awarded or provide the security or bail or as to any other matter concerning them shall be referred to and determined by the Committee of Lloyd's whose decision shall be final and is to be complied with forthwith.

12. The master enters into this agreement as agent for the vessel and cargo and the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.

13. Any of the following parties may object to the sum named in Clause 1 as excessive or insufficient having regard to the services which proved to be necessary in performing the agreement or to the value of the property salvaged at the completion of the operations and may claim arbitration viz.:—(1) The owners of the ship (2) Such other persons together interested as owners and/or underwriters of any part not being less than one-fourth of the property salvaged as

the Committee of Lloyd's in their absolute discretion may by reason of the substantial character of their interest or otherwise authorize to object (3) The contractor (4) The Committee of Lloyd's (b)—Any such objection and the award upon the arbitration following thereon shall be binding not only upon the objectors but upon all concerned provided always that the arbitrators or arbitrator or umpire may in case of objection by some only of the parties interested order the costs to be paid by the objectors only, provided also that if the Committee of Lloyd's in their public capacity be objectors they shall not themselves act as arbitrators or umpires.

14. If the parties to any such arbitration or either of them desire to be heard or to adduce evidence at the arbitration they shall give notice to that effect to the Secretary of Lloyd's and shall respectively nominate a person in London to represent them for all the purposes of the arbitration and failing such notice and nomination being given within fourteen days or such longer period as the said Committee of Lloyd's may allow after the notice of objection the arbitrators or arbitrator or umpire may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.

15. Any award, notice, authority, order, or other document signed by the Deputy Chairman or Secretary of Lloyd's on behalf of the Committee shall be deemed to have been duly signed by and shall have the same force and effect in all respects as if it had been signed by every member of the Committee.

(b) See *The City of Calcutta* (1898), 8 Asp. M. L. C. 442 (C. A.).

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